

October 14, 2016

TO: Mayor and City Council Members

FROM: Wayne S. Davis, City Manager *WSD*

SUBJECT: City Council Work Session of Wednesday, October 19, 2016

As a reminder, City Council is scheduled to meet in Work Session on Wednesday, October 19, 2016 at 7:00 p.m.

### Work Session

1. Call to Order
2. Roll Call
3. Guests and Residents
4. Legislation for Consideration Tonight
5. Establishing an Agenda for November 2, 2016

### Pending Legislation

- a. An Ordinance to Make Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017—(Mr. Suer, 2<sup>nd</sup> Reading) Information has been supplied previously on this Ordinance that establishes the City's Budget for fiscal year 2017. These documents were presented to and reviewed with the Financial Planning Committee of City Council at their September 6 meeting. On September 14, City Council and staff formally reviewed the 2017 Operating and Capital Budget with Four Year Forecast and 2017-2021 Capital Improvement Program. Changes to the Budget as a result of that meeting have been incorporated into the revised Budget.

***Add this Ordinance to the November 2, 2016 Business Session for second reading at that meeting. The third reading will be held at the December 7, 2016 Business Session with adoption of the Ordinance requested at that meeting.***

### New Legislation

- a. A Resolution Authorizing The City Manager To Enter Into A Contract With Morton Salt, Inc. For The Purchase of De-Icing Rock Salt For The 2017 Season— Please find attached correspondence from Brian Riblet, Public Works Director, requesting that City Council authorize the City Manager to enter into a contract extension with Morton Salt, Inc. pursuant to a joint purchasing bid for 2016-2017 de-icing rock salt. The purchase of de-icing rock salt for the 2016-2017 winter season is included in the City budget in both the 261.000.5380 Street Maintenance and 265.000.5380 State Highway Fund. If approved, the request would authorize a maximum purchase of 1,430 tons of de-icing rock salt for the amount of \$75,089.30 (\$52.51 per ton) which represents a 31% decrease per ton from the 2015/2016 winter season.

***Add this Resolution to the November 2, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

- b. An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances—Please find attached correspondence from Katie Smiddy, Finance Director, requesting that City Council adopt an Ordinance that will adjust the allocation of the City's Earnings Tax Revenues. As you may recall, in the City's "2017 Operating and Capital Budget with Four Year Forecast" document, staff requested that City Council proceed with legislation which reallocates the City's Earnings Tax revenues effective February 1, 2017. The current allocation is: 76% of Earnings Tax revenues to the General Fund, 20% to the Capital Improvement Fund and 4% to the Debt Retirement Fund. The proposed reallocation would provide 80% of the Earnings Tax revenues to the General Fund and 20% to the Capital Improvement Fund.

***Add this Ordinance to the November 2, 2016 Business Session agenda and assign it to a City Council Member for first reading that evening. The second reading of the Ordinance will be held at the December 7, 2016 Business Session. The third reading of the Ordinance will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- c. A Resolution Authorizing a Purchase Agreement for the Sale of Montgomery Commons Real Estate—Please find attached correspondence from Terry Donnellon, Law Director, requesting that City Council authorize a purchase agreement for the sale of Montgomery Commons Real Estate. Mr. Donnellon explains that this legislation is the last step in a 30-year process under which the City acquired land at the corner of Montgomery Road and Cooper Road, and it is transferring that land to the current property owner. The City acquired the property in an economic development transaction when a Tax Increment Financing district was created for the downtown lot. The Lease Agreement with the prior property owner granted to the Lessee the purchase option for \$1.00 in November 2016. The current land owner, Montgomery Commons LLC, has sent notice to the City that they wish to exercise those rights.

***Add this Resolution to the November 2, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

- d. An Ordinance Amending The Land Usage Code To Regulate Sexually Oriented Businesses—Please find attached correspondence from Terry Donnellon, Law Director, requesting that City Council approve an Ordinance to enact regulations governing Sexually Oriented Businesses. While such a business may not be compatible with the City's Business District and uses, the courts will not allow local communities to ban such businesses as they enjoy certain First Amendment freedoms. On the other hand, we are permitted to regulate the businesses through a licensing process and to allow separation of such businesses from protected uses such as residences, schools, and daycare centers. This Ordinance will enact the structure for the City to regulate the location and operation of these businesses in the City.

***Add this Ordinance to the November 2, 2016 Business Session agenda and assign it to a City Council Member for first reading that evening. The second reading of the Ordinance will be held at the December 7, 2016 Business Session. The third reading of the Ordinance will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- e. An Ordinance Rezoning A Portion Of The Vintage Club Development To L-B Limited Business District With A Planned Development Overlay—Please find attached correspondence from Tracy Roblero, Community Development Director, requesting that City Council adopt an Ordinance that will rezone the property located at PIN 620-0210-0723-00 from the current zoning classification to

'LB' – Limited Business District with a Planned Development Overlay. City Council held a Public Hearing on October 5, in which the recommendation from the Planning Commission was heard regarding a request from MB Land Company to consider a rezoning application of this property. The property was recently annexed into the City of Montgomery from Symmes Township. The property is currently zoned 'O' Residence with Subservient Office and Business Uses as it was zoned when located in the Township. Section 151.0104 states that for "all land that may hereafter be annexed to the City of Montgomery, the township zoning regulations existing at the time of annexation shall continue to govern the former township land until an amendment to the City of Montgomery Zoning Map is adopted in conformance with the procedures of this Zoning Code". Staff supports the rezoning of this property that would make the zoning consistent with the zoning of the Vintage Club.

***Add this Ordinance to the November 2, 2016 Business Session agenda and assign it to a City Council Member for first reading that evening. The second reading of the Ordinance will be held at the December 7, 2016 Business Session. The third reading of the Ordinance will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- f. An Ordinance Amending The Statement Of Conditions And Exceptions In The Vintage Club Planned Development Overlay District—Please find attached correspondence from Tracy Roblero, Community Development Director, requesting that City Council adopt an Ordinance that will modify the Vintage Club Planned Development List of Exceptions and Conditions. The proposed modifications to the Statement of Conditions and Exceptions were created by Staff and the applicant working hand in hand to address the conflicts between the Zoning Regulations in the underlying LB District and the approved General Development Plan. These modifications are consistent with the approved General Development Plan and the intent of the Vintage Club Planned Development which has been communicated from the beginning of the project.

***Add this Ordinance to the November 2, 2016 Business Session agenda and assign it to a City Council Member for first reading that evening. The second reading of the Ordinance will be held at the December 7, 2016 Business Session. The third reading of the Ordinance will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- g. A Resolution Authorizing A Contract With Motorola For The Purchase Of Replacement Radios—Please find attached correspondence from Paul Wright, Fire Chief, and John Crowell, Assistant Police Chief, requesting that City Council approve a Resolution authorizing the expenditure of \$139,645 for the purchase of 50 Motorola APX6000 portable radios and other support equipment. The Police Department's share would consist of \$65,403.50 and the share for the Fire Department would be \$74,241.50. The total purchase cost between the Police and Fire departments is \$139,645. This would be a savings of \$63,073.50 shared between both departments compared to the current budgeted cost of approximately \$202,000. Due to personnel vacancies, the Police Department budget has appropriation authority to accommodate the purchase in this fiscal year. The Fire Department would require an adjustment in appropriations before the close of the 2016 fiscal year. The radio equipment is currently listed with the State of Ohio purchasing contract 573077-0 which expires June 30, 2017. This would allow the City to purchase the radio equipment without conducting a formal bidding process.

***Add this Resolution to the November 2, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

## 6. Administration Report

## 7. Law Director Report

## **8. City Council Member Reports**

- a. Mrs. Combs
- b. Mr. Cappel
- c. Mrs. Harbison
- d. Vice Mayor Roesch
- e. Mr. Suer
- f. Mr. Margolis
- g. Mayor Dobrozsi

## **9. Approval of Minutes**—October 5, 2016 Public Hearing Minutes; October 5, Business Session Meeting

## **10. Other Business**

## **11. Executive Session**

## **12. Adjournment**

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Administrative Coordinator  
Department Heads  
Terry Donnellon, Law Director  
File

October 19, 2016

**City Council Work Session –7:00 p.m.**

1. Call to Order
2. Roll Call
3. Special Presentation
4. Guests and Residents
5. Legislation for Consideration Tonight
6. Establishing an Agenda for November 2, 2016

**Pending Legislation**

- a. An Ordinance to Make Appropriations for Current Expenses and Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017—(Mr. Suer, 2<sup>nd</sup> Reading)

***Add this Ordinance to the November 2, 2016 Business Session for second reading. The third reading of the Ordinance will be held at the December 7, 2016 Business Session with adoption of the Ordinance requested at that meeting.***

**New Legislation**

- a. A Resolution Authorizing The City Manager To Enter Into A Contract With Morton Salt, Inc. For The Purchase of De-Icing Rock Salt For The 2017 Season

***Add this Resolution to the November 2, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

- b. An Ordinance for The Allocation of Earnings Tax Revenues and Amending Section 44.14 of The Montgomery Code of Ordinances

***Add this Ordinance to the November 2, 2016 Business Session agenda and assign it to a City Council Member for first reading that evening. The second reading of the Ordinance will be held at the December 7, 2016 Business Session. The third reading of the Ordinance will be held at the January 4, 2017 Business Session with adoption of the Ordinance requested at that meeting.***

- c. A Resolution Authorizing a Purchase Agreement for the Sale of Montgomery Commons Real Estate

***Add this Resolution to the November 2, 2016 Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.***

d. An Ordinance Amending The Land Usage Code To Regulate Sexually Oriented Businesses

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f. An Ordinance Amending The Statement Of Conditions And Exceptions In The Vintage Club Planned Development Overlay District

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**8. Law Director Report**

**9. City Council Member Reports**

- a. Mrs. Combs
- b. Mr. Cappel
- c. Mrs. Harbison
- d. Vice Mayor Roesch
- e. Mr. Suer
- f. Mr. Margolis
- g. Mayor Dobrozsi

**10. Approval of Minutes**— October 5, 2016 Public Hearing Minutes; October 5, Business Session Meeting

**11. Other Business**

**12. Executive Session**

**13. Adjournment**

ORDINANCE NO. \_\_\_\_\_, 2016

**AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MONTGOMERY, STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2017**

**WHEREAS**, Council previously did approve and submit to the Budget Commission a budget for revenues and expenses for the fiscal year commencing January 1, 2017 and ending December 31, 2017; and

**WHEREAS**, the proposed budget has been accepted and approved, and Council does desire to appropriate funds according to the budget to meet current expenses and other expenditures for the 2017 fiscal year.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** Commencing January 1, 2017 and for the fiscal year ending December 31, 2017, in order to provide for the current expenses and other expenditures of the City, the sums detailed on the attached schedule are hereby appropriated as if such schedule is fully set forth herein.

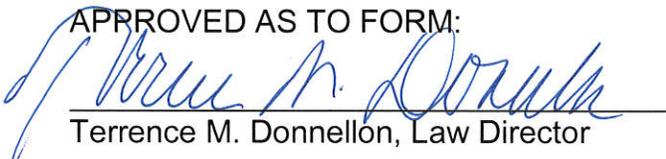
**SECTION 2.** This Ordinance shall be in full force and effect from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

## Attachment to 2017 Appropriation Ordinance

General Fund		
101 Police Department	Personnel	3,119,797
	Nonpersonnel	457,062
	<b>Total</b>	<b>\$3,576,859</b>
106 Disaster Services	Personnel	0
	Nonpersonnel	9,300
	<b>Total</b>	<b>\$9,300</b>
201 Public Health and Welfare	Personnel	58,179
	Nonpersonnel	0
	<b>Total</b>	<b>\$58,179</b>
301 Recreation	Personnel	226,870
	Nonpersonnel	93,752
	<b>Total</b>	<b>\$320,622</b>
303 City Parks	Personnel	301,941
	Nonpersonnel	206,000
	<b>Total</b>	<b>\$507,941</b>
317 Swaim and Terwilliger Lodges	Personnel	0
	Nonpersonnel	31,600
	<b>Total</b>	<b>\$31,600</b>
321 Special Events	Personnel	0
	Nonpersonnel	104,250
	<b>Total</b>	<b>\$104,250</b>
405 Landmarks Commission	Personnel	0
	Nonpersonnel	13,250
	<b>Total</b>	<b>\$13,250</b>
406 City Beautiful	Personnel	0
	Nonpersonnel	123,411
	<b>Total</b>	<b>\$123,411</b>
407 Development	Personnel	363,883
	Nonpersonnel	426,100
	<b>Total</b>	<b>\$789,983</b>
408 Planning Commission	Personnel	0
	Nonpersonnel	11,000
	<b>Total</b>	<b>\$11,000</b>
409 Historical Building Operations	Personnel	0
	Nonpersonnel	43,700
	<b>Total</b>	<b>\$43,700</b>
701 City Administration	Personnel	457,200
	Nonpersonnel	23,600
	<b>Total</b>	<b>\$480,800</b>
702 Finance Department	Personnel	570,815
	Nonpersonnel	61,225

	<b>Total</b>	<b>\$632,040</b>
703 Legal Administration	Personnel	0
	Nonpersonnel	218,000
	<b>Total</b>	<b>\$218,000</b>
705 City Council	Personnel	17,304
	Nonpersonnel	3,750
	<b>Total</b>	<b>\$21,054</b>
707 Mayor's Court	Personnel	86,076
	Nonpersonnel	76,775
	<b>Total</b>	<b>\$162,851</b>
708 Civil Service Commission	Personnel	0
	Nonpersonnel	4,150
	<b>Total</b>	<b>\$4,150</b>
709 Public Works Administration	Personnel	532,025
	Nonpersonnel	139,500
	<b>Total</b>	<b>\$671,525</b>
712 Community and Information Services	Personnel	486,253
	Nonpersonnel	144,290
	<b>Total</b>	<b>\$630,543</b>
715 General Government	Personnel	10,000
	Nonpersonnel	1,471,270
	<b>Total</b>	<b>\$1,481,270</b>
Total General Fund Transfers/Cash Advances Out		<b>699,006</b>
Total General Fund	Personnel	6,230,343
	Nonpersonnel	4,360,991
	<b>Total</b>	<b>10,591,334</b>

**Special Revenue Funds**

219 Community Oriented Policing Solutions	Personnel	156,516
	Nonpersonnel	3,500
	<b>Total</b>	<b>\$160,016</b>
223 Fire Department	Personnel	2,191,628
	Nonpersonnel	726,694
	<b>Total</b>	<b>\$2,918,322</b>
261 Street Maintenance and Repair	Personnel	758,515
	Nonpersonnel	285,579
	<b>Total</b>	<b>\$1,044,094</b>
209 Memorial Fund	Personnel	0
	Nonpersonnel	3,000
	<b>Total</b>	<b>\$3,000</b>
210 Parks & Recreation	Personnel	0
	Nonpersonnel	500
	<b>Total</b>	<b>\$500</b>
215 Law Enforcement	Personnel	0
	Nonpersonnel	12,300

	<b>Total</b>	<b>\$12,300</b>
216 Drug Enforcement	Personnel	0
	Nonpersonnel	400
	<b>Total</b>	<b>\$400</b>
217 DUI Enforcement and Education	Personnel	0
	Nonpersonnel	1,000
	<b>Total</b>	<b>\$1,000</b>
218 Mayor's Court Technology Fund	Personnel	0
	Nonpersonnel	13,295
	<b>Total</b>	<b>\$13,295</b>
220 Law Enforcement Assistance Fund	Personnel	0
	Nonpersonnel	1,600
	<b>Total</b>	<b>\$1,600</b>
227 Environmental Impact Area I	Personnel	0
	Nonpersonnel	15,000
	<b>Total</b>	<b>\$15,000</b>
228 Environmental Impact Area II	Personnel	0
	Nonpersonnel	75,000
	<b>Total</b>	<b>\$75,000</b>
229 Environmental Impact Area III	Personnel	0
	Nonpersonnel	5,000
	<b>Total</b>	<b>\$5,000</b>
230 Environmental Impact Area IV	Personnel	0
	Nonpersonnel	1,500
	<b>Total</b>	<b>\$1,500</b>
265 State Highway Fund	Personnel	0
	Nonpersonnel	54,000
	<b>Total</b>	<b>\$54,000</b>
266 Permissive MVL Fund	Personnel	0
	Nonpersonnel	79,000
	<b>Total</b>	<b>\$79,000</b>
275 Municipal Pool	Personnel	0
	Nonpersonnel	263,450
	<b>Total</b>	<b>\$263,450</b>
485 Arts and Amenities	Personnel	0
	Nonpersonnel	94,200
	<b>Total</b>	<b>\$94,200</b>
<b>Total Special Revenue Funds</b>	Personnel	3,106,659
	Nonpersonnel	1,635,018
	<b>Total</b>	<b>4,741,677</b>

**Debt Service Funds**

322 Special Assessment Bond Retirement	Personnel	0
	Nonpersonnel	16,010
	<b>Total</b>	<b>\$16,010</b>

324 General Bond Retirement	Personnel	0
	Nonpersonnel	12,200
	<b>Total</b>	<b>\$12,200</b>
328 Reserve Bond Retirement	Personnel	0
	Nonpersonnel	176,625
	<b>Total</b>	<b>\$176,625</b>
331 Vintage Club Tax Increment Financing Fund	Personnel	0
	Nonpersonnel	2,019,045
	<b>Total</b>	<b>\$2,019,045</b>
Total Debt Service Funds	Personnel	0
	Nonpersonnel	2,223,880
	<b>Total</b>	<b>2,223,880</b>

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**Capital Projects Funds**

410 Capital Improvements	Personnel	0
	Nonpersonnel	3,560,144
	<b>Total</b>	<b>\$3,560,144</b>
460 Urban Redevelopment Fund	Personnel	0
	Nonpersonnel	287,650
	<b>Total</b>	<b>\$287,650</b>
461 Triangle Equivalent TIF	Personnel	0
	Nonpersonnel	153,900
	<b>Total</b>	<b>\$153,900</b>
463 Vintage Club Capital Construction Fund	Personnel	0
	Nonpersonnel	6,500,000
	<b>Total</b>	<b>\$6,500,000</b>
Total Capital Projects Funds	Personnel	0
	Nonpersonnel	10,501,694
	<b>Total</b>	<b>10,501,694</b>

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**Fiduciary Funds**

875 Compensated Absence	Personnel	27,000
	Nonpersonnel	0
	<b>Total</b>	<b>\$27,000</b>
546 Trust Reimbursements	Personnel	0
	Nonpersonnel	50,000
	<b>Total</b>	<b>\$50,000</b>
601 State Fees	Personnel	0
	Nonpersonnel	10,000
	<b>Total</b>	<b>\$10,000</b>
836 Historical Trust Fund	Personnel	0
	Nonpersonnel	500
	<b>Total</b>	<b>\$500</b>
840 Cemetery Expendable Trust	Personnel	0
	Nonpersonnel	44,850
	<b>Total</b>	<b>\$44,850</b>

<b>890 Unclaimed Moneys Fund</b>	Personnel	0
	Nonpersonnel	716
	<b>Total</b>	<b>\$716</b>
<b>Total Fiduciary Funds</b>	Personnel	27,000
	Nonpersonnel	106,066
	<b>Total</b>	<b>133,066</b>

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**Total All Funds**

Personnel	9,364,002
Nonpersonnel	18,827,649
<b>Total</b>	<b>28,191,651</b>

October 14, 2016

TO: Wayne Davis, City Manager

FROM: Brian Riblet, Public Works Director *BKR*

SUBJECT: Legislation request for authorization to enter into a contract with Morton Salt Company for the purchase of deicing rock salt

**Request**

It is necessary for City Council to adopt a Resolution Authorizing the City Manager to enter into a contract with Morton Salt pursuant to a joint purchasing bid for 2016-2017 de-icing rock salt.

**Financial Impact**

The purchase of de-icing rock salt for the 2016-2017 winter season is included in the City budget in the 261.000.5380 Street Maintenance, 266.000.5380 Permissive MVL Fund and 265.000.5380 State Highway Fund. If approved, the request would authorize a maximum purchase of 1,430 tons of de-icing rock salt for the amount of \$75,089.30 (\$52.51 per ton) which represents a 31% decrease per ton from the 2015/2016 winter season.

**Background**

Each year the City enters into a contract for the purchase of de-icing rock salt for the winter season. The past several winter seasons the City of Montgomery has entered into a joint purchasing bid with the City of Cincinnati, however, this year staff was able to secure a commitment through the Hamilton County Engineer's Office to enter into a joint purchasing bid with Hamilton County for the purchase of de-icing rock salt for the upcoming 2016/2017 winter season.

**Recommendation**

It is recommended that City Council adopt legislation to authorize the City Manager to enter into a contract with Morton Salt pursuant to a joint purchasing bid for the 2016-2017 winter season for a maximum purchase of 1,430 tons of de-icing rock salt for the amount of \$75,089.30 (\$52.51 per ton).

If there are any questions or additional information is required, please do not hesitate to contact me.



# MORTON SALT

SEPTEMBER 28, 2016

City of Montgomery  
10101 Montgomery Road  
Montgomery, OH 45242

Dear Sir/Madam:

You are now included on the Ohio Hamilton County bid. We are pleased to offer the following bid covering your normal anticipated requirements of Morton Safe-T-Salt for the period from 07/28/2016 thru 07/28/2017.

**MORTON BULK SAFE-T-SALT**

20 ton minimum dump truck delivery -----\$52.51per ton

For ordering: 855/665-4540

Stockpile: Cincinnati Stockpile

Terms of payment are Net 30 days.

The bulk treated salt offered in this bid is suitable for ice removal and road stabilization only.

All prices quoted herein are subject to acceptance within 30 days and shall be deemed automatically to have been withdrawn if, by the end of that period, no award has been made.

We sincerely appreciate the opportunity to offer this quotation and trust that you will permit us to serve your requirements.

Anthony T. Patton  
Director, U.S. Gov't Bulk Deicing  
Sales & Marketing

Daniel P. Thompson  
Vice President, Bulk Deicing  
Sales & Marketing

RESOLUTION NO. , 2016

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A  
CONTRACT WITH MORTON SALT, INC. FOR THE PURCHASE OF  
DE-ICING ROCK SALT FOR THE 2016-2017 SEASON**

**WHEREAS**, R.C. § 9.48 authorizes counties, townships and municipal corporations to participate in joint purchasing programs with other municipal corporations for the purchase of machinery, materials and supplies without advertisement and without bids; and

**WHEREAS**, for the winter season 2016-2017, the Hamilton County Engineers Office has competitively bid for the bulk purchase of de-icing rock salt consistent with the rules, regulations and laws of Hamilton County, and which competitive bid did authorize the Hamilton County Engineer to extend its terms for purchase to other communities in and around Hamilton County, Ohio; and

**WHEREAS**, the Montgomery City Administration believes that participating in the joint program and bid through Hamilton County is more economically efficient and provides a better benefit to Montgomery than separately bidding such purchase.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The City Manager is hereby authorized to enter into a contract with Morton Salt, Inc. for the purchase of de-icing rock salt for the 2016-2017 winter season through the contract bid accepted by Hamilton County with Morton Salt, Inc. at the

cost of \$52.51 per ton with the maximum purchase of 1,430 tons. The total cost for this contract shall not exceed \$ 75,089.30.

**SECTION 2.** Council hereby finds that purchasing through the contract with the County of Hamilton is in the best interest of the City of Montgomery and is consistent with the terms and conditions of R.C. § 9.48.

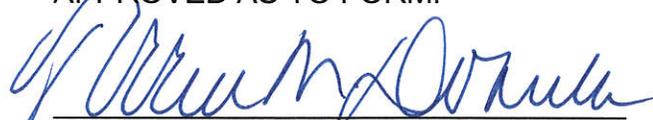
**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

September 22, 2016

To: Wayne Davis, City Manager  
 From: Katie Smiddy, Finance Director *KS*  
 Subject: Reallocation of the Earnings Tax Revenues

**Introduction**

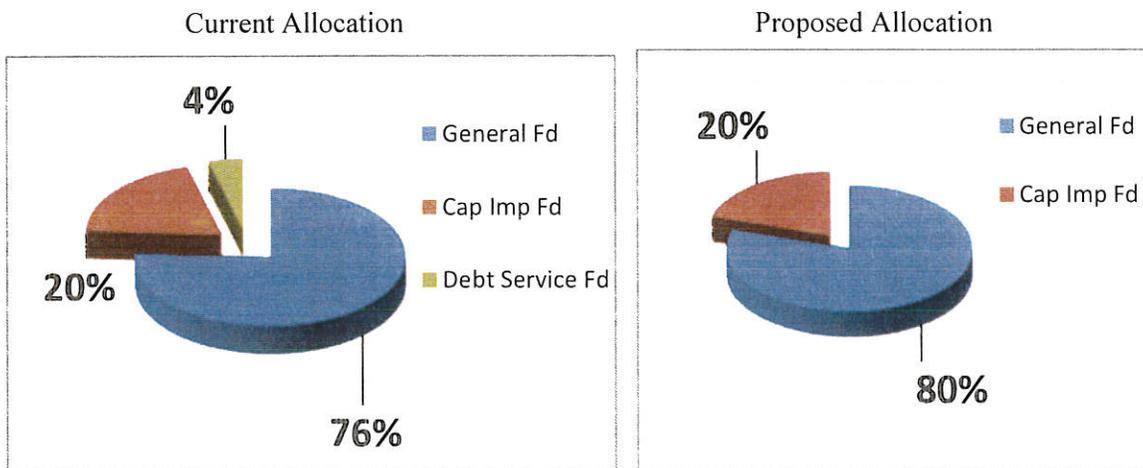
As proposed in the City’s 2017 Operating and Capital Budget with Five Year Forecast document, staff is requesting that City Council consider proceeding with legislation which reallocates the City’s Earnings Tax revenues effective January 1, 2017.

**Background**

To maintain the City’s goal of matching financial resources to strategic operations, and staying focused on continued stewardship of City resources in a prudent manner while delivering quality and outstanding services, the City successfully paid off all outstanding General Obligation Debt in 2015. In order to ensure that future reallocation ratios support City operations for both the short term and long term, the proposed reallocation will increase General Fund revenue levels in 2017. It is anticipated that there could be a future reallocation of Earnings Tax back into the General Bond Retirement Fund at some point in the future, depending on the City’s financial plans and the potential need for debt issuance for economic development projects.

**Financial Impact**

The current earnings tax allocation is: 76% of Earnings Tax revenues to the General Fund, 4% to the General Bond Retirement Fund and 20% to the Capital Improvement Fund. The proposed reallocation would provide 80% of the Earnings Tax revenues to the General Fund, 0% to the General Bond Retirement Fund and 20% to the Capital Improvement Fund as presented below:



The proposed allocation would provide the General Fund, over the next five years, with approximately \$1,700,000 in redistributed tax revenues to support operations while continuing to meet targeted fund balances in the General Fund, and Capital Improvement Fund. Attached for your information are the cash flows for year 2017 through 2021 which have been copied from the Annual Operating Budget document which estimates targeted fund balances for these two funds for years 2017 through 2021.

**Exhibit A-** the General Fund is estimated to maintain an operating reserve of 16 months in 2017 reducing to 11 months in 2021.

**Exhibit B** -the Capital Improvement Fund is estimated to maintain a cash balance ranging from \$2.9 to \$3.5 million for years 2017 through 2021, which is in excess of the target balance of \$1 million.

### **Recommendation**

It is recommended that City Council consider placing this item on the agenda for the first reading at the November 2 Council Business Meeting, second reading December 7 with final passage at the January 4, 2017 Business Meeting. This suggested timeline provides staff adequate time to incorporate the proposed reallocation into the 2017 Operating and Capital Budget.

City of Montgomery  
Proposed reallocation of Earnings Tax effective 1/1/2017  
9/26/2017

Exhibit A

General Fund	2015	2016	2017	2018	2019	2020	2021
<b>Beg Cash Balance</b>	13,988,889	13,224,151	13,654,389	13,308,501	12,747,230	11,974,316	11,696,437
<b>Revenues:</b>							
GF Revenue	9,928,281	9,780,339	9,911,669	9,952,086	10,057,554	10,952,825	10,212,646
Additional Income Tax 4%	-	-	333,777	340,453	347,262	354,207	361,291
Transfers In							
<b>Total Revenues:</b>	9,928,281	9,780,339	10,245,446	10,292,539	10,404,816	11,307,032	10,573,937
<b>Expenses</b>							
Total Operating Expenditures	8,199,019	8,801,101	9,892,328	10,098,210	10,429,029	10,835,911	10,970,594
<b>Total Expenses</b>	8,199,019	8,801,101	9,892,328	10,098,210	10,429,029	10,835,911	10,970,594
Transfers Out	2,494,000	549,000	699,006	755,600	748,700	749,000	853,400
<b>End Cash Balance</b>	<b>\$ 13,224,151</b>	<b>\$ 13,654,389</b>	<b>\$ 13,308,501</b>	<b>\$ 12,747,230</b>	<b>\$ 11,974,316</b>	<b>\$ 11,696,437</b>	<b>\$ 10,446,380</b>
Reserved Fund Balance			824,361	841,518	869,086	902,993	914,216
Operating Reserve (in months)			16.14	15.15	13.78	12.95	11.43

Exhibit B

		Capital Improvement Fund									
		2015	2016	2017	2018	2019	2020	2021			
<b>Beg Cash Balance</b>		4,147,550	4,039,174	3,239,322	2,980,311	2,947,369	3,362,220	3,529,521			
<b>Revenues:</b>											
GF Revenue		1,806,000	1,833,068	3,301,133	2,052,429	2,069,453	7,831,648	2,250,694			
<b>Total Revenues:</b>		1,806,000	1,833,068	3,301,133	2,052,429	2,069,453	7,831,648	2,250,694			
<b>Expenses</b>											
Total Capital Improvements		1,914,376	2,632,920	3,560,144	2,085,371	1,654,602	7,664,347	2,223,283			
<b>Total Expenses</b>		1,914,376	2,632,920	3,560,144	2,085,371	1,654,602	7,664,347	2,223,283			
Transfers Out		-	-	-	-	-	-	-			
<b>End Cash Balance</b>		<b>\$ 4,039,174</b>	<b>\$ 3,239,322</b>	<b>\$ 2,980,311</b>	<b>\$ 2,947,369</b>	<b>\$ 3,362,220</b>	<b>\$ 3,529,521</b>	<b>\$ 3,556,932</b>			

ORDINANCE NO. \_\_\_\_\_, 2016

**AN ORDINANCE FOR THE ALLOCATION OF EARNINGS TAX REVENUES  
AND AMENDING SECTION 44.14 OF THE MONTGOMERY CODE OF ORDINANCES**

**WHEREAS**, Section 44.14 of the Montgomery Code of Ordinances provides for the allocation of earnings tax revenues to certain uses and purposes; and

**WHEREAS**, the City's changing financial condition warrants a current re-examination of the earnings tax allocation to more accurately reflect operating, capital improvement and debt service needs of the community.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Ohio:

**SECTION 1.** Section 44.14 of the Montgomery Code of Ordinances is hereby amended to read as follows effective February 1, 2017:

**Section 44.14 Allocation Of Funds**

The funds collected under the provision of this chapter shall be disbursed for the following purposes:

- (A) 20% to the capital improvement fund;
- (B) 80% to the general fund for the purpose of general municipal operations.

**SECTION 2.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed effective February 1, 2017.

**SECTION 3.** This Ordinance shall be in full force and effect from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

TO: Mayor Christopher P. Dobrozsi  
Members of City Council

FROM: Terrence M. Donnellon

RE: Sale of Montgomery Commons Real Estate

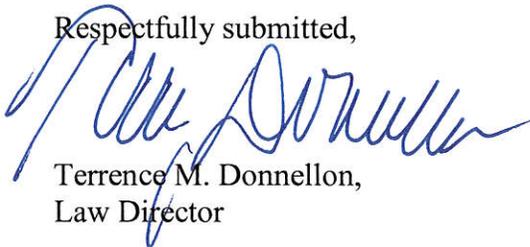
DATE: October 13, 2016

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In 1986 the City entered into a Lease Agreement with Kenwood III Partnership to lease property at the corner of Montgomery Road and Cooper Road for One Dollar (\$1.00) for a period of 30 years. The property was part of a Tax Increment Financing district and the City received payments in lieu of taxes for the past 30 years to spur economic development on the corner lot.

The successor to Kenwood III Partnership is now Montgomery Commons LLC. Montgomery Commons has notified the City that they wish to exercise their purchase rights which accrue November 16, 2016. This legislation will authorize the City Manager to complete the sale consistent with the terms of the original Lease Agreement. The City will retain the property at the corner representing Neuilly-Plaisance Plaza which was separated out from their leased property several years ago. Montgomery Commons LLC will receive the remaining land and the parking lot associated with the property. At the conclusion of this 30 year period, the TIF district will also expire. This legislation not only authorizes the sale, but execution of additional documentation necessary to complete the sale, which may include certain cross easements for the City to maintain the landscaping and surrounding streetscape with Neuilly-Plaisance Plaza, and will allow certain overhang easements to the property owner consistent with its approved Development Plan as the City's property runs directly to the building line for this real estate.

Respectfully submitted,



Terrence M. Donnellon,  
Law Director

TMD/lld

cc: Connie Gaylor, Administrative Coordinator  
Department Heads  
File

RESOLUTION NO.                   , 2016

**A RESOLUTION AUTHORIZING PURCHASE AGREEMENT FOR THE SALE  
OF MONTGOMERY COMMONS REAL ESTATE**

**WHEREAS**, the City is the owner of real estate at the corner of Cooper Road and Montgomery Road, as more particularly described on Schedule A attached hereto; and

**WHEREAS**, in November 1986, the City did lease this property to Kenwood III Partnership for a period of thirty (30) years, which under the terms of such Lease Agreement allowed the Lessee to purchase the property at the conclusion of the Lease term for One Dollar (\$1.00); and

**WHEREAS**, such Lease has been assigned with the approval of the City from Kenwood III Partnership through James and Paul Grammas to Montgomery Commons LLC, an Ohio limited liability company; and

**WHEREAS**, Montgomery Commons LLC has notified the City that they wish to exercise their purchase rights effective at the close of the Lease term; and

**WHEREAS**, consistent with the terms of such Lease Agreement, Council does desire to authorize the City Manager to complete the sale and to execute any and all other documentation necessary to complete the sale and to transfer such real estate to Montgomery Commons LLC.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The City Manager is hereby authorized to execute a Purchase Agreement consistent with the terms of the original Lease Agreement to sell the property commonly known as Montgomery Commons from the City to Montgomery Commons LLC.

The sale price shall be One Dollar (\$1.00) as provided in the purchase option within the Lease Agreement.

**SECTION 2.** The City Manager is authorized to execute any and all additional documentation necessary to complete the sale and transfer of this real estate as described on Schedule A attached hereto and incorporated herein by reference.

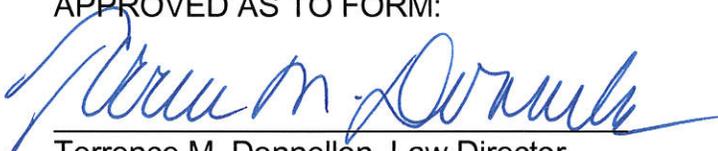
**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

TO: Mayor Christopher P. Dobrozsi  
Members of City Council

FROM: Terrence M. Donnellon

RE: Sexually Oriented Businesses

DATE: October 14, 2016

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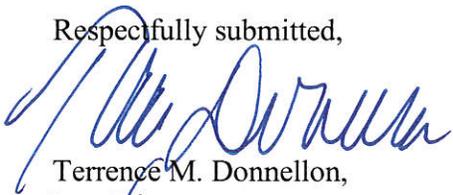
Attached for your consideration is an Ordinance regulating Sexually Oriented Businesses. This Ordinance will bring our Code into compliance with the law concerning the zoning and regulation of Sexually Oriented Businesses. Many of these business types have been granted First Amendment freedom by the U.S. Supreme Court and because of that special status we cannot prohibit them in the community, but we can only regulate them within reason.

The Ordinance for your consideration is drawn from the model Ordinance prepared by the Ohio Attorney General's office. ORC § 715.55 allows the City to request the office of the Attorney General to provide legal assistance in developing and formulating a draft Ordinance with the added benefit that the Ohio Attorney General's office will provide defense to the City if the Ordinance is challenged.

The comprehensive regulations permit the use of this type of business only within the General Business District, and then only when located more than 750 feet from a residential use, a church, school or daycare. Once the site has been located the business must make a separate application for a business license and the business and its employees must be relicensed on an annual basis.

The application for a business is \$500.00 to cover the cost to review and investigate the application. There also is a \$500.00 license fee and annual renewal fee. Employees of the business also must apply for a license at a cost of \$25.00 with a similar \$25.00 annual renewal fee.

Respectfully submitted,



Terrence M. Donnellon,  
Law Director

TMD/ld

cc: Connie Gaylor, Administrative Coordinator  
Department Heads  
File

**ORDINANCE NO.                   , 2016**

**AN ORDINANCE AMENDING THE LAND USAGE CODE TO  
REGULATE SEXUALLY ORIENTED BUSINESSES**

**WHEREAS**, under ORC § 715.55, the City may request the Ohio Office of the Attorney General to provide legal guidance and assistance in developing, formulating and drafting an Ordinance regarding the operation of adult entertainment establishments; and

**WHEREAS**, the Ohio Attorney General's office has provided a model Ordinance incorporated herein to regulate Sexually Oriented Businesses so as to meet the City's interest in minimizing the negative impact of such businesses upon the City; and

**WHEREAS**, the Planning Commission, at a meeting held August 15, 2016, did review and recommend these regulations, and the district within the City within which these business enterprises will be permitted considering the negative impact such business enterprises have upon the community and particularly surrounding properties, and considering the fact that 75% or more of the City is developed as residential and related residential uses such as schools, daycares and religious institutions, and the majority of the business corridor directly abuts such residential uses either within the City or within the City of the Village of Indian Hill; and

**WHEREAS**, the Planning Commission has concluded and Council concurs that there must be adequate separation between adult entertainment businesses and residential uses to minimize the negative impact of such businesses; and

**WHEREAS**, prior to considering this Ordinance, the City Council has been offered for their review and consideration a number of the cases cited in Section 1(C) of this Ordinance and current news articles from the *Cincinnati Enquirer* detailing criminal activity at such adult entertainment establishments in and around the Greater Cincinnati area; and

**WHEREAS**, Council did hold a public hearing on October 5, 2016 to consider the recommendation from the Planning Commission for the adoption of this Ordinance, at which public hearing a presentation was made by the staff of the Department of Community Development and the Law Director outlining factors they considered in making a recommendation for the regulations enacted herein and defining the area in the City within which such businesses may locate; and

**WHEREAS**, it is the intent of the Council to adopt this Ordinance within the guidelines of the model Ordinance so as to enjoy such indemnification against any claims or suits which may be asserted against the City, its City Council, employees or agents; and

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Montgomery, Hamilton County, Ohio, that a section of the Code of Ordinances entitled, *Sexually Oriented Businesses*, shall be adopted as follows:

**SECTION 1.            PURPOSE AND INTENT**

(A) In enacting this Ordinance, pursuant to § 715.55 of the Ohio Revised Code, the City Council makes the following statement of intent and findings:

(1) Adult entertainment establishments require special supervision from the public safety agencies of this City in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of this City.

(2) The City Council finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

(3) The concern over sexually transmitted diseases is a legitimate health concern of this City that demands reasonable regulation of adult entertainment establishments by this City in the specified manner, and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens.

(4) Minimal regulations enacted by this City are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(5) There is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, cause increased crime, particularly in the overnight hours, and downgrade property values.

(6) The City Council desires to minimize and control these adverse effects by regulating adult entertainment establishments in the specified manner. And by minimizing and controlling these adverse effects, the City Council seeks to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

(7) The City Council has determined that current local zoning and other locational criteria do not adequately protect the health, safety, and general welfare of the people of this City and that expanded regulation of adult entertainment establishments is necessary.

(8) It is not the intent of the City Council in enacting this act to suppress or authorize the suppression of any speech activities protected by the First Amendment, but to enact content-neutral statutes that address the secondary effects of adult entertainment establishments.

(9) It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in this state.

(B) It is the intent of the City Council in enacting this Ordinance to regulate adult entertainment establishments in the manner set forth herein in order to promote the health, safety, morals, and general welfare of the citizens of this City and establish reasonable regulations to prevent the deleterious secondary effects of adult

entertainment establishments within this City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of the City Council in enacting this Ordinance to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, nor to deny, or authorize the denial of, access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the City Council in enacting this Ordinance to condone or legitimize the distribution or exhibition of obscene material.

(C) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and subsequently adopted by the Ohio General Assembly as findings under Section 3 of 2005 House Bill 23 (and on findings incorporated in the cases of *Township of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *Township of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *Township of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. Township of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. Township of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. Township of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. Township of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. Township of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. Township of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. Township of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. Township and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. Township of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New

York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and the City Council's independent review of the same) the City Council finds:

(1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.

(2) Certain employees of adult entertainment establishments, as defined in this Ordinance as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The "couch dances" or "lap dances" that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of "engaging in prostitution" under Section 2907.25 of the Revised Code.

(4) Offering and providing private or semi-private booths or cubicles encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.

(6) Numerous communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.

(8) A total of 10,255 AIDS cases had been reported in Ohio as of January 1999. Ohio has required HIV case reporting since 1990, and the reported information shows 7,969 people living with (HIV) (4,213) and (AIDS) (3,756) in the state.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen. 33,613 cases were reported in 1982, and 45,200 cases were reported through November 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(12) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, and exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) Sanitary conditions in some adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) The findings noted in divisions (C)(1) to (14) of this section raise substantial governmental concerns.

(16) Adult entertainment establishments have operational characteristics that require or mandate subject them to reasonable government regulation in order to protect those substantial governmental concerns.

(17) The enactment of this Ordinance will promote the general welfare, health, morals, and safety of the citizens of the City of Montgomery.

**SECTION 2.** The following sections shall be added to the Land Usage Code, Chapter 151.18, Regulation of Sexually Oriented Businesses:

**§ 151.181 DEFINITIONS**

(A) As used in this Ordinance:

(1) "adult bookstore," "adult cabaret," "adult motion picture theater," "adult video store," "characterized by," "nude," "nudity," "state of nudity," "seminude," "state of seminudity," "sexual device," "sexual device shop," "sexual

encounter center,” “specified anatomical areas,” and “specified sexual activity” have the same meanings as in Section 2907.40 of the Revised Code; and

(2) “adult arcade,” “adult entertainment,” “adult entertainment establishment,” “adult novelty store,” “adult theater,” “distinguished or characterized by their emphasis upon,” “nude or seminude model studio,” “regularly features,” “regularly shown,” and “sexual encounter establishment” have the same meanings as in Section 2907.39 of the Revised Code.

(B) “EMPLOYEE” means any individual on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(C) “IMMEDIATE FAMILY” means a person's spouse residing in the person's household, parents, siblings of the whole or of the half blood, and children, including adopted children.

(D) “LICENSE” means a license to act or operate a Sexually Oriented Business, issued pursuant to this Ordinance.

(E) “LICENSEE” means a person in whose name a license to operate has been issued, as well as the individual(s) designated on the license application as principally responsible for the operation of the Sexually Oriented Business. With respect to an Employee license issued under this Ordinance, licensee means an employee as defined by Section (2), sub-section (B) above in whose name a license has been issued authorizing employment at Sexually Oriented Business.

(F) “OPERATE” means to control or hold primary responsibility for the operation of a Sexually Oriented Business, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. “Operate” or “Cause to be Operated” shall mean to cause to function or to put or keep in operation.

(G) “OPERATOR” means any individual on the premises of a Sexually Oriented Business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a Sexually Oriented Business whether or not that person is an owner, part owner, or licensee of the business.

(H) “PATRON” means any individual on the premises of a Sexually Oriented Business, except for any of the following:

(1) An operator or an employee of the Sexually Oriented Business;

(2) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;

(3) A public employee or a firefighter/emergency medical services worker acting within the scope of the public employee's duties as a public employee.

(I) "PERSON" means an individual, proprietorship, partnership, trust, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

(J) "PREMISES" means the real property on which the Sexually Oriented Business is located and all appurtenances to the real property, including, but not limited, to the Sexually Oriented Business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the Sexually Oriented Business.

(K) "SEXUALLY ORIENTED BUSINESS" means an adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motion picture theater, adult novelty store, adult theater, adult video store, sexual device shop, sexual encounter center, and sexual encounter establishment as defined by Section (2), sub-section (A) of this Ordinance, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.

(L) "SPECIFIED CRIMINAL ACTIVITY" means any of the following offenses:

(1) Prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar offenses to those described above under the criminal or penal code of any local jurisdiction, state, or country;

(2) for which:

(a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

(b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

(3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a Specified Criminal Activity as defined in this section.

(M) "TRANSFER OF OWNERSHIP OR CONTROL" of a Sexually Oriented Business shall mean any of the following:

(1) the sale, lease, or sublease of the business;

(2) the transfer of securities which constitute a controlling interest in the business whether by sale, exchange, or similar means; or

(3) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

#### **§ 151.182 ZONING REGULATIONS**

(A) Sexually Oriented Businesses may only be established in the General Business District and shall be subject to all further restrictions of this Chapter. No person shall establish a Sexually Oriented Business within seven hundred fifty (750) feet of another such business or within seven hundred fifty (750) feet of a property used for residential purposes, a school, a daycare, or a church.

(B) For purchases of this Chapter, distance between any two Sexually Oriented Businesses or between any Sexually Oriented Business and any Protected Use shall be measured in a straight line without regard to intervening structures from the nearest part of the structure containing a Sexually Oriented Business to the nearest property line of the protected use. Protected uses are residential uses, schools, daycares and churches.

#### **§ 151.183 LICENSE REQUIRED**

(A) No person shall:

(1) Operate a Sexually Oriented Business as defined by Section (2), sub-section (K) without a valid Sexually Oriented Business license issued by the City pursuant to this Ordinance.

(2) In connection with operating a Sexually Oriented Business, retain the services of a person as an employee, as defined in this Ordinance, who is not licensed as a Sexually Oriented Business employee by the City pursuant to this Ordinance.

(B) Any person who violates sub-section (A)(1) above shall be guilty of a misdemeanor of the third degree for a first offense, and a misdemeanor of the first degree for any second or subsequent offense.

(C) A violation of sub-section (A)(2) above shall be a ground for the suspension of a Sexually Oriented Business license as provided for in Section (10) of this Ordinance.

(D) No person shall act as an employee, as defined in this Ordinance, on the premises of a Sexually Oriented Business without having secured a Sexually Oriented Business employee license ("Employee License") pursuant to this Ordinance.

(E) A violation of sub-section (E) shall be a ground for the suspension of a Sexually Oriented Business employee license as provided for in Section (10) of this Ordinance.

#### **§ 151.184 APPLICATION FOR LICENSE**

(A) An original or renewal application for a Sexually Oriented Business license shall be submitted to the Community Development Director or its designee on a form provided by the Community Development Director. The City's application may require and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

(B) A filing fee shall be paid at the time of filing the application in the amount of Five Hundred Dollars (\$500.00).

(C) An application for a Sexually Oriented Business license shall identify and be signed by the following persons:

(1) If the business entity is owned by an individual, that individual.

(2) If the business entity is owned by a corporation, each Officer or Director of the corporation, any individual owning or controlling more than fifty (50) percent of the voting shares of the corporation, and any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed Sexually Oriented Business.

(3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the organization, who will be principally responsible for the operation of the proposed Sexually Oriented Business.

(D) An application for a Sexually Oriented Business license must designate one or more individuals who are to be principally responsible for the operation of the proposed Sexually Oriented Business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed Sexually Oriented Business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this Ordinance, and shall be considered a licensee if a license is granted.

(E) An application for a Sexually Oriented Business license shall be completed according to the instructions on the application form, which shall require the following:

(1) If the applicant is:

(a) an individual, state the legal name and any aliases of such individual; or

(b) a partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any; or

(c) a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, state the complete name of the organization and provide a copy of the legal document establishing the organization, if any; or

(d) a corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacities of all Officers and Directors, the name of the registered corporate agent for the State of Ohio, and the address of the registered office within the State of Ohio for service of process.

(2) If the applicant intends to operate the Sexually Oriented Business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.

(3) State whether any applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance, and if so, the Specified Criminal Activity involved and the date, place, and jurisdiction of each such conviction.

(4) State whether any applicant has had a previous license under this Ordinance or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, or fifty (50) percent or greater owner of a corporation licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) State whether any applicant holds any other licenses under this Ordinance or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.

(6) State the location of the proposed Sexually Oriented Business, including a legal description of the property (i.e., permanent parcel number), street address, and telephone number(s), if any.

(7) State the mailing address and residential address of each applicant and each person signing the application.

(8) Submit a recent photograph of each applicant who is a natural person, taken by the Montgomery Police Department that clearly shows the applicant's face.

(9) Submit the fingerprints of each applicant who is a natural person, recorded by the Montgomery Police Department.

(10) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed Sexually Oriented Business.

(11) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.

(12) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

(13) Submit a sketch or diagram showing the configuration of the premises of the Sexually Oriented Business. The diagram shall also designate the place at which the adult business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the City can determine whether the Ordinance's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.

(15) The information gathered pursuant to the above provisions constitute protected private information and are exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

### **§ 151.185 ISSUANCE OF A LICENSE**

(A) Upon receipt of an application for a Sexually Oriented Business license, the Community Development Department shall promptly request that the Montgomery Police Department review the information provided in the application concerning the criminal background of the applicant(s) and that the Montgomery Police Department shall transmit the results of its investigation in writing to the Community Development Department within five (5) days of the completion of its investigation.

(B) Within five (5) days of receipt of an application for a Sexually Oriented Business, the Community Development Department shall notify the City Fire Chief and the Hamilton County Health Commissioner of such application. In making such notification, the Community Development Department shall request that the Fire Chief and Health Commissioner promptly inspect the premises for which the Sexually Oriented Business license is sought to assess compliance with the regulations under their respective jurisdictions.

(C) The Fire Chief shall provide to the Community Development Department a written certification of whether the premises are in compliance with the City Fire Code within ten (10) days of receipt of notice of the application.

(D) The Community Development Department, or its designee, shall commence the inspection of the premises for which a Sexually Oriented Business license is sought promptly upon receipt of the application, and shall complete, within ten (10) days after receipt of the application, a written certification of whether the premises are in compliance with the City Zoning Ordinance, the City Building Code, and the provisions of this Ordinance related to physical characteristics of the premises, and whether the City has received notice from any state or county agency of the premises being in violation of any applicable state building or property codes.

(E) Within twenty-one (21) days after receipt of a completed Sexually Oriented Business license application, the Community Development Department shall approve or deny the issuance of a license. The Community Development Department shall approve the issuance of a license to an applicant unless he/she determines that one or more of the following findings is true:

(1) An applicant who is a natural person is under eighteen (18) years of age.

(2) An applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its Social Security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).

(3) An applicant has, within the preceding twelve (12) months, been denied a Sexually Oriented Business license by any jurisdiction or has had a license to operate a Sexually Oriented Business revoked by any jurisdiction.

(4) An applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance.

(5) The proposed Sexually Oriented Business would violate or fail to be in compliance with any provisions of this Ordinance, the City Zoning Ordinance, the City Building Code, or state statute or regulation.

(6) The application and investigation fee required by this Ordinance has not been paid.

(7) An applicant is in violation of or not in compliance with any provision of this Ordinance, except as provided in Section (6), sub-section (F) of this section.

(F) If the Community Development Department determines that one or both of the following findings is true, the license issued pursuant to this section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:

(1) The results of inspections of the premises by the Fire Chief or its designee or the Health Commissioner or its designee indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions.

(2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business, which are not the subject of a pending appeal or other legal challenge.

(G) A Sexually Oriented Business license shall state on its face the name of the applicant, the expiration date, and the address of the licensed Sexually Oriented Business. All Sexually Oriented Business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(H) The Community Development Department or its designee shall advise the applicant in writing within three (3) days of the Community Development Department's decision of the reasons for any license denial. If the City finds, subsequent to denial, that the basis for the denial of the license has been corrected or abated, the applicant may reapply.

(I) Before an approved Sexually Oriented Business license shall be issued, the applicant shall pay a one year license fee of Five Hundred Dollars (\$500.00).

#### **§ 151.186 EMPLOYEE LICENSE APPLICATION**

(A) An application for an Employee license shall be submitted to the Community Development Department on a form provided by the Community Development Department. The application may request, and the applicant shall provide, such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

(B) A filing fee shall be paid at the time of the application in the amount of Twenty Five Dollars (\$25.00).

(C) An application for an employee license shall be completed according to the instructions of the application form, which shall require the following:

(1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.

(2) State the applicant's date and place of birth.

(3) State the applicant's height, weight, and hair and eye color.

(4) Submit a recent photograph of the applicant, taken by the Montgomery Police Department, which clearly shows the applicant's face.

(5) Submit the applicant's fingerprints, recorded by the Montgomery Police Department.

(6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed Sexually Oriented Business.

(7) State the applicant's present residence address and telephone number.

(8) State the applicant's present or intended business address and telephone number.

(9) State the applicant's driver's license number and Social Security number.

(10) Submit proof that the applicant is at least eighteen (18) years old.

(11) Provide a statement detailing the Sexually Oriented Business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a Sexually Oriented Business, in this or any other jurisdiction, and whether the applicant has ever had a Sexually Oriented Business-related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.

(12) State whether the applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance and, if so, the Specified Criminal Activity involved and the date, place and jurisdiction of each such conviction.

(13) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the City can determine whether the Ordinance's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented

establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.

(14) The information gathered pursuant to the above provisions constitutes protected private information and is exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

**§ 151.187 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE**

(A) Upon the filing of a completed application for an employee license, the Community Development Department shall issue a license to said applicant immediately.

(B) Within five (5) days of receipt of a completed application for an employee license, the Community Development Department shall request that the Montgomery Police Department initiate an investigation of the information provided in the application concerning the criminal background of the applicant. The Montgomery Police Department shall document the results of its investigation in writing within five (5) days of the completion of its investigation and transmit this writing to the Community Development Department or its designee.

(C) Within ten (10) days after completion of the criminal background investigation of the applicant, the Community Development Department shall either affirm the prior issuance of the license or revoke the license. The Community Development Department shall affirm the prior issuance of a license to an applicant unless he/she determines that one or more of the following findings are true:

(1) The applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).

(2) The applicant is under eighteen (18) years of age.

(3) The applicant has been convicted of a Specified Criminal Activity as defined in this Ordinance.

(4) The employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.

(5) The applicant has, within the preceding twelve (12) months, been denied an employee license by any jurisdiction or has had an employee license revoked by any jurisdiction.

(D) If the employee license is revoked, the Community Development Department shall advise the applicant in writing within three (3) days of the reason(s) for any such revocation.

(E) Before an approved Sexually Oriented Business employee license shall be issued, an approved applicant shall pay a license fee of Twenty Five Dollars (\$25.00).

#### **§ 151.188 EXPIRATION AND RENEWAL OF LICENSE**

(A) Each license issued pursuant to this Ordinance shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than twenty-one (21) days before the expiration date. If application is made less than twenty-one (21) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(B) An application for renewal of a Sexually Oriented Business license shall be submitted to the Community Development Department on a form provided by the Community Development Department. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Ordinance. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or such application shall be revised to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial Sexually Oriented Business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

(C) The Community Development Department shall make determinations concerning the approval of license renewals based on the same criteria and time mandates used to evaluate applications for new licenses under this Ordinance.

(D) The Community Development Department shall advise the applicant in writing within three (3) days of the reason(s) for any denial of a license renewal.

(E) An application for renewal of an employee license shall be submitted to the Community Development Department on a form provided by the Community Development Department. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Ordinance. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or requires revision to reflect any change in circumstances or conditions.

(F) When the City denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial. However, if the City finds, subsequent to denial, that the basis for the denial of the renewal

license has been corrected or abated, the applicant may reapply prior to the expiration of the one year period.

(G) An approved Sexually Oriented Business licensee shall pay an annual renewal license fee of Five Hundred Dollars (\$500.00) before a license shall be issued. An approved Sexually Oriented Business employee licensee shall pay an annual license fee of Twenty Five Dollars (\$25.00) before a renewal license shall be issued.

#### **§ 151.189 SUSPENSION**

(A) The City shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if it determines that a licensee:

(1) has violated or is not in compliance with any section of this Ordinance; or

(2) has knowingly allowed an employee to violate or fail to comply with any section of this Ordinance.

(B) The City shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if it determines that a licensee or its employee or agent has refused to allow, or has prohibited or has interfered with, an inspection of the licensed Sexually Oriented Business premises as authorized by Section (6), sub-sections (B) – (C) of this Ordinance or any other reasonable inspection.

(C) The City shall suspend an employee license for a period not to exceed thirty (30) days if it determines that a licensee has violated or is not in compliance with any section of this Ordinance.

(D) The Community Development Department shall advise the licensee in writing within three (3) days of the reason(s) for any suspension.

#### **§ 151.1810 REVOCATION**

(A) The City shall revoke a Sexually Oriented Business license or employee license if a cause of suspension under this Ordinance occurs and the license has been suspended two times within the preceding twelve (12) months.

(B) The City shall revoke a Sexually Oriented Business license if it determines that:

(1) a licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;

(2) the licensee(s) failed to comply with any requirement stated in the license, pursuant to this Ordinance, to correct specified deficiencies within 120 days;

(3) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) a licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;

(5) a licensee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;

(6) a licensee has knowingly allowed any act of Specified Criminal Activity, as defined in this Ordinance, to occur in or on the licensed premises;

(7) a licensee has been convicted of a Specified Criminal Activity, as defined in this Ordinance, during the term of the license; or

(8) a licensee is delinquent in payment to the City, County, or State for any taxes or fees that were assessed or imposed in relation to any business.

(C) The City shall revoke an employee license if it determines that:

(1) the licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;

(2) the licensee has knowingly acted as an employee on the premises of a Sexually Oriented Business during a period of time when the licensee's license was suspended; or

(3) the licensee has been convicted of a Specified Criminal Activity, as defined in this Ordinance during the term of the license.

(D) The Community Development Department shall advise the licensee in writing within three (3) days of the reason(s) for any revocation.

(E) When the City revokes a license pursuant to sub-sections (A), (B)(3) – (7), (C)(2) or (3) above, the licensee shall not be issued another license for one (1) year from the date the revocation became effective.

(F) When the City revokes a license pursuant to sub-sections (B)(1), (B)(8) or (C)(1) above, the applicant may be granted a license if the basis for the revocation has been corrected or abated and at least thirty (30) days have elapsed since the date the revocation became effective.

### **§ 151.1811 APPEAL RIGHTS**

(A) Any denial, suspension, or revocation of a license under this Ordinance may be appealed to the City Council by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the

City Council must hold a hearing on the appeal within twenty-one (21) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing. During the time between the date of the denial, suspension, or revocation of a license and the date of the City Council decision affirming or reversing the denial, suspension, or revocation, the status quo of the license holder or applicant shall be maintained.

(B) In the event that the City Council denies, suspends, or revokes a new or renewal license under this Ordinance, or any action taken on an appeal that is provided by this Ordinance, the applicant may pursue an appeal to Hamilton County Court of Common Pleas pursuant to Revised Code Chapter 2506. The failure of the City Council to render a decision on the application within the time prescribed in Section (10), sub-section (A) above shall be considered an affirmance of the denial, suspension, or revocation of the license and the applicant may pursue an appeal to Hamilton County Court of Common Pleas pursuant to Revised Code Chapter 2506. This appeal provision is intended to comply with the requirement for prompt judicial review stated by the United States Supreme Court in *Township of Littleton, Colorado v. Z. J. Gifts D-4* (2004), 541 U.S. 774.

(C) Any licensee lawfully operating a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the City Council of a decision rendered under this Ordinance and during the entire time required for the Court of Common Pleas to rule on the appeal pursuant to sub-section (B) above.

(D) Any licensee lawfully acting as an employee in a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the City Council of a decision rendered under this Ordinance and during the entire time required for the Court of Common Pleas to rule on the appeal pursuant to sub-section (B) above.

(E) In the event that any judicial review of the denial of a new or renewal license application or the revocation or suspension of a license is still pending thirty (30) days before the expiration date of any license, the licensee may file a renewal license application with the Community Development Department pursuant to this Ordinance. In the event that an application for renewal of a license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with any pending judicial actions in regards to the previous denial, suspension or revocation of a license.

(F) If, during the pendency of any appeal pursued under sub-section (B) above, there are additional denials of a renewal license application or suspensions or revocations of that license, the City has the right to consolidate the appeal pursued under

Section (12), sub-section (B) above for the additional denials, suspensions or revocations with any pending appeal for that same licensee.

### **§ 151.1812 TRANSFER OF LICENSE**

(A) A Sexually Oriented Business license is not transferable from one licensee to another or from one location to another. Any purported transfer of a Sexually Oriented Business license shall automatically and immediately revoke that license.

(B) An employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed Sexually Oriented Business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the Community Development Department within fifteen (15) days of such transfer.

### **§ 151.1813 ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF A SEXUALLY ORIENTED BUSINESS**

(A) Sexual Activity, Live Entertainment and Performances

(1) No person shall, in a Sexually Oriented Business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.

(2) Any employee appearing on the premises of a Sexually Oriented Business in a state of semi-nudity, as defined by this Ordinance, must be on a stage that is at least twenty-four (24) inches from the floor, and at a distance at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.

(3) All live entertainment and performances in a Sexually Oriented Business must take place on a stage that is at least twenty-four (24) inches from the floor and a distance of at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.

(4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by the operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise,

display racks or other materials or enclosures at all times that any patron is present on the premises.<sup>1</sup>

(5) No employee shall knowingly or intentionally, in a Sexually Oriented Business, appear within view of any patron in a nude or semi-nude condition unless the employee, while nude or semi-nude, shall be and remain at least six (6) feet from all patrons.<sup>2</sup>

(6) Employees in a Sexually Oriented Business shall maintain a minimum distance of five (5) feet from areas on the business premises occupied by patrons for a minimum of twenty (20) minutes after the employee appears in a nude or semi-nude condition within view of any patron. This regulation is not intended to prohibit ingress or egress from the premises. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments.<sup>3</sup>

(7) No patron who is not a member of the employee's immediate family shall knowingly touch an employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or semi-nude.<sup>4</sup>

(8) No employee who regularly appears nude or seminude on the premises of a Sexually Oriented Business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow the patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.<sup>5</sup>

(9) The provisions of sub-sections (A)(1) – (8) shall not apply to an employee's use of any restroom or any single-sex dressing room that is accessible only to employees.

(10) In addition, sub-sections (A)(1) – (8) shall not apply to live performances in which the patron and employee are separated by an impenetrable barrier such as, but not limited too, glass or Plexiglas.

(B) Minors Prohibited. No person under the age of 18 years shall be permitted on the premises of a Sexually Oriented Business.

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<sup>1</sup> *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291.

<sup>2</sup> *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291.

<sup>3</sup> *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485.

<sup>4</sup> Pursuant to R.C. 2907.40(C)(1).

<sup>5</sup> Pursuant to R.C. 2907.40(C)(2).

(C) Hours of Operation. No Sexually Oriented Business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a Sexually Oriented Business that holds a liquor permit pursuant to Chapter 4303 of the Revised Code may remain open until the hour specified in that permit if it does not conduct, offer, or allow Sexually Oriented Business activity in which the performers appear nude.<sup>6</sup>

**SECTION 3.** The *Schedule of Permitted Uses* in § 151.1203 shall be amended to reflect that Sexually Oriented Businesses are a Permitted Use in the General Businesses District (G-B) with a footnote referring to the above regulation in Chapter 151.18

**SECTION 4.** If any section, sub-section, paragraph or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, sub-sections, paragraphs, and clauses shall not be affected.

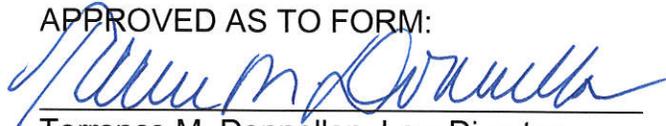
**SECTION 5.** This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

<sup>6</sup> Pursuant to R.C. 2907.40(B).

October 14, 2016

**TO:** Wayne S. Davis, City Manager

**FROM:** Tracy Roblero, Community Development Director *JMR*

**SUBJECT:** Forward Request for Rezoning the Property Located at PIN 620-0210-0723-00

**Request**

It is requested that City Council consider a recommendation for the Planning Commission to rezone the property located at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay. City Council held a public hearing on this request at the Business Session on October 5. No adjacent property owners spoke in support or in opposition to the application.

**Background**

The property the applicant, MB Land Company, is proposing to rezone is approximately 0.0361 acres in size and the applicant is working with the current owner to purchase the property for development as part of the Vintage Club of Montgomery. The applicant is proposing to rezone the property to 'LB' – Limited Business with a Planned Development Overlay in conformance with the zoning of the Vintage Club of Montgomery. The property was recently annexed into the City of Montgomery from Symmes Township. The property is currently zoned 'O' Residence with Subservient Office and Business Uses as it was zoned when located in the Township. Section 151.0104 states that "all land that may hereafter be annexed to the City of Montgomery, the township zoning regulations existing at the time of annexation shall continue to govern the former township land until an amendment to the City of Montgomery Zoning Map is adopted in conformance with the procedures of this Zoning Code". The applicant is requesting a zone change that is consistent with the zoning of the Vintage Club and intends for this property to become part of the Vintage Club Planned Development.

**Planning Commission Action**

The Planning Commission met on August 15 to consider this application. Notices were sent to neighbors within a 300' radius of the property. Staff received several inquiries on the project; however, no property owners submitted comments in opposition or in favor of the rezoning. After hearing the testimony presented at the meeting and discussing the application, the Planning Commission voted unanimously to recommend approval of the rezoning of the property at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay.

**Recommendation**

Staff supports the recommendation of the Planning Commission to recommend approval of the rezoning of the property. The applicant is requesting a zone change that is consistent with the zoning of the Vintage Club and intends for this property to become part of the Vintage Club Planned Development which has been communicated from the beginning of the project. The subject property has been shown as part of the development on the approved General Development Plan despite the fact that it was located in Symmes Township. The applicant and property owner have taken the appropriate steps to have the property annexed into the City of Montgomery and will consolidate this property into the lot for Building A. Staff does not believe that rezoning this property will have a negative impact surrounding properties due to the facts that it is a small parcel of property that does not have frontage on Montgomery Road, the surrounding properties are commercial in nature and this property was always intended to be included in the Vintage Club Planned Development. Therefore, Staff supports this application to rezone the property at located at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay.

ORDINANCE NO. , 2016

**AN ORDINANCE REZONING A PORTION OF THE VINTAGE CLUB DEVELOPMENT TO L-B LIMITED BUSINESS DISTRICT WITH A PLANNED DEVELOPMENT OVERLAY**

**WHEREAS**, at the time the Vintage Club site on Montgomery Road was zoned into the L-B Limited Business District and subjected to a Planned Development Overlay, a portion of the site consisting of approximately .0361 acres, being Auditor's parcel number 620-0210-0723, was located in Symmes Township, and while it was part of the project site it was not properly zoned within the Vintage Club development; and

**WHEREAS**, in proceedings over this past calendar year, such parcel was annexed from Symmes Township into the City of Montgomery; and

**WHEREAS**, Section 151.0104 of the Land Usage Code provides that any land annexed into the City is subject to the similar zoning category in which it was located within the Township until such time as it is rezoned within the City after annexation; and

**WHEREAS**, the Planning Commission has reviewed an application to rezone this property into the L-B Limited Business District subject to the same Vintage Club Planned Development Overlay, as amended, so that the property may be properly developed consistent with the General Development Plan for the site; and

**WHEREAS**, the Planning Commission, on August 15, 2016, did consider such application and recommended rezoning the site to be consistent with the project site for the Vintage Club; and

**WHEREAS**, Council did hold a public hearing on October 5, 2016 to consider such recommendations from the Planning Commission; and

**WHEREAS**, Council has recommended that these modifications be adopted.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The property as more fully described on Exhibit A attached hereto and incorporated herein by reference, consisting of .0361 acres previously identified as Auditor's parcel number 620-0210-0723 which has now been properly annexed into the City of Montgomery, shall be rezoned to L-B Limited Business District subject to the Vintage Club Planned Development Overlay District rules and regulations, as amended.

**SECTION 2.** The Community Development Director is hereby directed to make a change in the zoning map to reflect the incorporation of this parcel into the L-B Limited Business District and the Vintage Club Planned Development Overlay District.

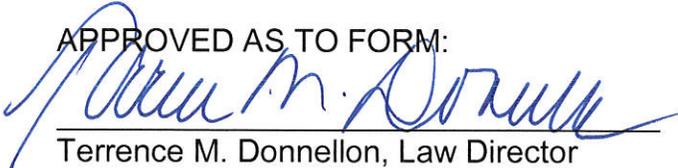
**SECTION 3.** This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

October 14, 2016

**TO:** Wayne S. Davis, City Manager

**FROM:** Tracy Roblero, Community Development Director *JMR*

**SUBJECT:** Forward Request for a Minor Modification to the Vintage Club Planned Development List of Exceptions and Conditions

**Request**

It is requested that City Council consider a recommendation for the Planning Commission for a minor modification to the Vintage Club Planned Development List of Exceptions and Conditions. City Council held a public hearing on this request at the Business Session on October 5. No adjacent property owners spoke in support or in opposition to the application.

**Background**

The applicant, MB Land Development, is developing the Vintage Club Village Section in partnership with Traditions Building and Development Group. A revised General Development Plan was approved by the Planning Commission in May of this year. During the original approval of the Planned Development in 2006 a Statement of Conditions and Exceptions was established and has since been modified on several occasions, most recently in March of 2013 in order to accommodate the public parking garage and the Christ Hospital medical office buildings. At the time that the Statement of Conditions and Exceptions was created and modified, it was not clear how the remainder of the village portion would be subdivided. With the approval of the revised General Development Plan and the proposed lot splits, these details have come into focus, requiring some modifications to the Statement of Conditions and Exceptions. Section 150.1311(b) allows the Planning Commission to recommend approval of minor modifications to the Planned Development provided that the modifications are consistent with the approved Planned Development. The applicant is requesting several proposed modifications which are consistent with the approved General Development Plan.

**Planning Commission Action**

The Planning Commission met on August 15 to consider this application. Notices were sent to neighbors within a 300' radius of the property. Staff received several inquiries on the project; however, no property owners submitted comments in opposition or in favor of the modifications. At the meeting, there was much discussion regarding the proposed modification to the height of the buildings in the interior to the Village Section. The minutes from the Planning Commission meeting are included in your packet. After hearing the testimony presented at the meeting and discussing the application, the Planning Commission voted 5 – 1 in favor of recommending approval of the minor modification as proposed.

**Recommendation**

Staff supports the recommendation of the Planning Commission to approve the proposed modifications to the Vintage Club Planned Development List of Exceptions and Conditions. The proposed modifications to the Statement of Conditions and Exceptions were created by Staff and the applicant working hand in hand to address the conflicts between the Zoning Regulations in the underlying LB District and the approved General Development Plan. These modification are consistent with the approved General Development Plan and the intent of the Vintage Club Planned Development which has been communicated from the beginning of the project. The modifications to the general conditions in regards to The Christ Hospital are a result of discussions between the developer, The Christ Hospital and the City to ensure that the Hospital is made of proposed changes to the plan and can be assured that these changes do not negatively impact the shared parking for the project.

ORDINANCE NO. , 2016

**AN ORDINANCE AMENDING THE STATEMENT OF CONDITIONS AND  
EXCEPTIONS IN THE VINTAGE CLUB PLANNED  
DEVELOPMENT OVERLAY DISTRICT**

**WHEREAS**, by Ordinance No. 11, 2006, Council did establish the terms and conditions for the Vintage Club Planned Development Overlay District (“District”); and

**WHEREAS**, by Ordinance No. 11, 2013, Council did make certain modifications to the District; and

**WHEREAS**, Council and the Planning Commission did reserve the right to make further modifications to the District consistent with a final General Development Plan for the northern site, which plans have now been submitted, reviewed and approved in part by the Planning Commission; and

**WHEREAS**, the Planning Commission did meet on August 15, 2016 to review and consider the proposed modifications to the District, which modifications were recommended by the Planning Commission; and

**WHEREAS**, Council did hold a public hearing on October 5, 2016 to consider such recommendations from the Planning Commission; and

**WHEREAS**, Council has recommended that these modifications be adopted.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The Statement of Conditions and Exceptions for the Vintage Club Planned Development Overlay District are hereby modified as follows:

A. The permitted height for buildings in the interior of the L-B Limited Business District section of the site shall be increased to a maximum of four stories or 52 feet in height. Such maximum height shall be measured as the average of the top of the parapet walls and/or the mean of the pitched roof for any such structures. No pitched roof element shall exceed 62 feet in height.

B. The perimeter and front yard landscape requirements, with the exception of properties fronting Montgomery Road, shall be modified to accept the landscaping as approved within the General Development Plan. Such modification is necessary as a result of lot splits within the site reflecting the fact that interior parking will be public parking fronting and surrounding each of these interior buildings.

C. There shall be no front, side or rear building setbacks for buildings in the L-B Limited Business section except as such property shall abut the residential village section of the site.

D. The setback requirements for the residential condominiums and/or offices along the northern boundary of the project within the L-B Limited Business District shall be reduced to 25 feet with a six foot landscape buffer.

E. Parking setbacks shall be eliminated for front, side and rear yards except the front yard setback for properties fronting Montgomery Road.

F. The Christ Hospital, the principal tenant of the property owned and developed by Brandicorp Montgomery Development Corporation on the southwest corner of the site, shall be deemed an adjacent property owner for purposes of notification concerning any modifications to the District and/or to achieve standing to appeal or take other legal action with regard to decisions of the Montgomery Planning Commission

and/or City Council concerning modifications to the General Development Plan, Final Development Plan, or modifications to the Vintage Club Planned Development Overlay District.

**SECTION 2.** All other zoning standards within the District set forth in Ordinance 11, 2006, as amended by Ordinance 11, 2013, are hereby ratified.

**SECTION 3.** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

**SECTION 4.** All sections, subsections, parts and provisions of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

**SECTION 5.** This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon, Law Director

October 14, 2016

TO: Wayne Davis, City Manager

FROM: Paul Wright, <sup>PCW</sup> Fire Chief and John Crowell, <sup>JPC</sup> Assistant Chief of Police

SUBJECT: Purchase of Equipment

### Introduction

The current Motorola portable radio used by our Police and Fire departments has been out of production for several years and Motorola announced that repair support for the current radios would stop in the year 2018. The Fire Department and Police Department have been planning on replacing these in the coming years.

An opportunity to purchase the replacement radios has presented itself at a significant cost savings.

### Background

A limited number of Motorola APX6000 portable radios used at this past Republican National Convention are available for purchase at a 50% off list price. The radios are compatible with the Ohio MARCS radio system and it can directly replace the current portable radio (Motorola XTS5000) in use by our Police and Fire Departments. The Motorola XTS5000 has been out of production for several years and Motorola is phasing out repair support for the model in year 2018. The radios and accessories are for sale directly from Motorola and were used for a 1-2 week period of time during the RNC event. Motorola is including a 3-year warranty from the date of 1<sup>st</sup> use which would have been mid-July of 2016.

In the upcoming fiscal years, both the Police and Fire departments have budgeted for replacement of the existing portable radios either through a multiyear replacement plan for the Police Department or as single year replacement planned by the fire department.

The Police Department purchasing plan starting in 2018 and continuing each year till 2025 would have an approximate cost of \$101,650 for replacement of the XTS5000 portable radios used by the Police Department. This would cover the cost of replacing 23 portable radios, shoulder microphones, batteries, individual battery chargers and bank chargers.

The Fire Department purchasing plan budgeted for 2019 involved a single year replacement of all XTS5000 portable radios and related equipment with an estimated cost of \$101,068.50. This amount is for replacement of 27 portable radios, shoulder microphones, batteries, individual chargers and bank chargers.

The existing forecast liability between the police and fire departments is \$202,718.50. (Please see included pages from the Capital Improvement for the Police and Fire Departments.)

The total proposed purchase for the City would include 50 Motorola APX6000 portable radios, 50 remote shoulder microphones, 19 individual chargers, 7 bank chargers, 50 spare batteries and the initial programming. The Police Department's share would consist of \$65,403.50 and the share for the Fire Department would be \$74,241.50. The total purchase cost between the Police and Fire departments is \$139,645. (See included quote from Motorola Solutions, Inc.)

This would be savings of \$63,073.50 shared between both departments compared to the forecasted liability.

Due to personnel vacancies, the Police Department budget has surplus funding that could accommodate the purchase in this fiscal year. The Fire Department would require an adjustment in appropriations before the fiscal year ending.

The radio equipment is currently listed with the State of Ohio purchasing contract 573077-0 which expires June 30, 2017. This would allow the City purchase the radio equipment without conducting a bidding process.

Normally this would be presented through Law and Safety committee, however due to the limited number of radios available for purchase with the significant cost savings potential, it was felt that the cost saving opportunity could be lost by following our normal process.

### **Recommendation**

It is recommended that City Council on the October 19, 2016 work session approve a Resolution authorizing the expenditure of \$139,645 for the purchase of the 50 Motorola APX6000 portable radios, 50 remote shoulder microphones, 19 individual chargers, 7 bank chargers, 50 spare batteries and the initial programming.



Customer #: 1036347351 Prepared By Austin Thomas  
 Quote Number #: 00RNC101416 Email austin.thomas@motorolasolutions.com

Office 312-967-3561  
 Mobile 312-497-8878

Date: 10/14/2016

Prepared For: John Crowell  
 Company: City of Montgomery  
 Phone: (513) 985-1619  
 Email: jcrowell@ci.montgomery.oh.us

Line	Qty	Model	Description	Last Price	RNC Retail Price	EXT Price
1	50	H98UCF9PW6AN	APX6000 700/800 MODEL 2.5 PORTABLE	\$ 2,738.00	\$ 1,369.00	\$ 68,450.00
1a	50	Q806BM	ADD: ASTRO DIGITAL CAI OPERATION	\$ 515.00	\$ 257.50	\$ 12,875.00
1b	50	H38BT	ADD: SMARTZONE OPERATION	\$ 1,200.00	\$ 600.00	\$ 30,000.00
1c	50	Q361AR	ADD: P25 9600 BAUD TRUNKING	\$ 300.00	\$ 150.00	\$ 7,500.00
1d	50	Q629	ENH: AES ENCRYPTION	\$ -	\$ -	\$ -
1e	50	H869	ENH: MULTIKEY	\$ -	\$ -	\$ -
1f	50	H122	ALT: 1/4- WAVE 7/800 GPS STUBBY	\$ 24.00	\$ 12.00	\$ 600.00
1g	50	QA01648	ADD: ADVANCED SYSTEM KEY - HARDWARE KEY	\$ 5.00	\$ 2.50	\$ 125.00
1h	50	QA01837	ALT: LION IMPRES IP67 2900MAH	\$ 100.00	\$ 50.00	\$ 2,500.00
1i	50	H885BK	ADD: 3 YEAR SERVICE FROM THE START LITE	\$ -	\$ -	\$ -
2	19	NNTN8860A	GEN2 SUC. 3A US/NA (115VAC ONLY) CHARGER	\$ 150.00	\$ 127.50	\$ 2,422.50
3	50	PMMN4065	REMOTE SPEAKER MIC	\$ 107.00	\$ 53.50	\$ 2,675.00
4	50	SVC03SVC0115D	RADIO PROGRAMMING	\$ 75.00	\$ 75.00	\$ 3,750.00
5	50	NNTN7038	SPARE LION BATTERY	\$ 142.00	\$ 71.00	\$ 3,550.00
6	7	NNTN7073B	MULTI-UNIT CHARGER	\$ 1,485.00	\$ 742.50	\$ 5,197.50
<b>Total</b>				<b>\$</b>	<b>\$ 139,645.00</b>	

This quote includes 1 lightly used APX6000 portable at demo pricing of 50% off list price  
 These units are limited and are being offered on a first come basis

**THIS QUOTE IS BASED ON THE FOLLOWING:**

- This quotation is provided to you for information purposes only and is not intended to be an offer or a binding proposal. If you wish to purchase the quoted products, Motorola will be pleased to provide you with our standard terms and conditions of sale (which will include the capitalized provisions below), or alternatively, receive your purchase order which will be acknowledged. Thank you for your consideration of Motorola products.
- Quotes are exclusive of all installation and programming charges (unless expressly stated) and all applicable taxes.
- Prices quoted are valid for thirty(30) days from the date of this quote.



## Capital Improvement Program Police Department

### Year 2017

#### Operating Equipment

1. Computer Replacement (\$1,600): Computer replacement.
2. State Bid Police Cruisers (\$111,395): Replacement of three vehicles on the rotation Three 2015 Taurus' were 106,000 fully equipped
3. Printer Replacement (\$400): Replacement of printer.
4. Replace duty weapons (\$2,500): Replace two duty weapons due to retirement (LaCalameto and Schill).

#### Capital Equipment

1. In-Car Video Cameras (\$13,900): Replacement of three in-car video systems. Includes a wireless video down system which will automatically download video from the cruiser.
2. Furnace /HVAC Safety Center (\$4,244): Represents 50% of the cost for replacement of the current HVAC/Furnace unit(s). This expense is split with the Fire Department.
3. Electronic Speed board (\$8,200): Three additional speed boards.
4. Mobile Data Computers (\$40,000): Regional computer center is indicating that our mobile data computer (MDC's) will require replacement in 2017. The cost for each of the 13 units is not expected to exceed \$3,000 per unit.

#### Capital Projects

1. Cruiser Carport (\$100,000): Design and construction cost for a cruiser carport.

### Year 2018

#### Operating Equipment

1. Computer Replacement (\$1,600): Computer replacement.
2. State Bid Police Cruisers (\$36,000): Replacement of one vehicle on the rotation
3. Printer Replacement (\$400): Replacement of printer.
4. Tasers (\$3,400): Replace three Electronic Control Devices
5. Replace duty weapons (\$1,250): Replace duty weapon due to retirement (Simpson).

#### Capital Equipment

1. Unmarked Police Vehicle (\$23,000): Replacement of 2012 Ford Taurus
2. Furnace /HVAC Safety Center (\$4,371): Represents 50% of the cost for replacement of the current HVAC/Furnace unit(s). This expense is split with the Fire Department.
3. 700/800mhz portable radios (\$15,000): Replacement of 700/800mhz portable radios. Existing Motorola radios only have replacement parts available through 2018. (3 radios)

### Year 2019

#### Operating Equipment

1. Computer Replacement (\$1,600): Computer replacement.
2. State Bid Police Cruisers (\$114,750): Replacement of three vehicles on the rotation
3. Printer Replacement (\$400): Replacement of printer.
4. Replace Laser Speed Detector (\$2,500): Purchase of a laser speed measuring device.

#### Capital Equipment

1. Furnace /HVAC Safety Center (\$4,502): Represents 50% of the cost for replacement of the current HVAC/Furnace unit(s). This expense is split with the Fire Department.
2. 700/800mhz portable radios (\$15,000): Replacement of 700/800mhz portable radios. Existing Motorola radios only have replacement parts available through 2018. (3 radios)

## Year 2020

### Operating Equipment

1. Computer Replacement (\$1,700): Computer replacement.
2. State Bid Police Cruisers (\$37,080): Replacement of one vehicle on the rotation
3. Printer Replacement (\$400): Replacement of a network printer.
4. Tasers (\$3,400): Replace 3 Tasers
5. Replace duty weapons (\$17,000): Replacement of duty handguns. Last department wide replacement occurred in 2010.
6. Replace Patrol Bicycle (\$1,500): Replace patrol bicycles

### Capital Equipment

1. In-Car Video Cameras (\$11,000):
2. Furnace /HVAC Safety Center (\$4,547): Represents 50% of the cost for replacement of the current HVAC/Furnace unit(s). This expense is split with the Fire Department.
3. 700/800mhz portable radios (\$15,000): Replacement of 700/800mhz portable radios. Existing Motorola radios only have replacement parts available through 2018. (3 radios)

## Year 2021

### Operating Equipment

1. Computer Replacement (\$1,700): Computer replacement.
2. State Bid Police Cruisers (\$117,250): Replacement of three vehicles on the rotation
3. Printer Replacement (\$412): Replacement of a network printer.

### Capital Equipment

1. Furnace /HVAC Safety Center (\$4,683): Represents 50% of the cost for replacement of the current HVAC/Furnace unit(s). This expense is split with the Fire Department.
2. 700/800mhz portable radios (\$15,450): Replacement of 700/800mhz portable radios. Existing Motorola radios only have replacement parts available through 2018. (3 radios)

# 101-101 Police Department : 2017 Capital Projects and Equipment Purchases

Description		A/R/C	Funding Source	2016 Budget	2016 Estimate	2017 Forecast	2017 Request	2018 Forecast	2019 Forecast	2020 Forecast	2021 Forecast	Total Forecast
<b>Operating Equipment (101-101-5404)</b>												
Patrol Rifle (Colt AR-15)	R		Opt. Budget	2,500	2,500	0	0	0	0	0	0	0
Computer Replacement	R		Opt. Budget	1,500	1,500	1,500	1,600	1,600	1,600	1,700	1,700	8,200
State Bid Police Cruisers	R		Opt. Budget	36,950	36,950	111,395	111,395	36,000	114,750	37,080	117,250	416,475
Printer Replacement	R		Opt. Budget	400	400	400	400	400	400	400	412	2,012
Tasers	R/A		Opt. Budget	0	0	0	0	3,400	0	3,400	0	6,800
Replace duty weapons	R		Opt. Budget	1,250	1,250	2,500	2,500	1,250	0	17,000	0	20,750
Replace Laser Speed Detector	A		Opt. Budget	2,500	2,500	0	0	0	2,500	0	0	2,500
Replace Patrol Bicycle	R		Opt. Budget	1,500	1,425	0	0	0	0	1,500	0	1,500
Computer Tablets for investigators	A		Opt. Budget	1,500	1,500	0	0	0	0	0	0	1,500
Command Vehicle Equipment	A		Opt. Budget	6,859	6,859	0	0	0	0	0	0	0
<b>Total Operating Equipment</b>				<b>54,959</b>	<b>54,884</b>	<b>115,795</b>	<b>115,895</b>	<b>42,650</b>	<b>119,250</b>	<b>61,080</b>	<b>119,362</b>	<b>458,237</b>
% Change					(0.14) %	110.98 %	111.16 %	(63.20) %	179.60 %	(48.78) %	95.42 %	
<b>Capital Equipment (410-101-5405)</b>												
In-Car Video Cameras	R		Cap. Impr. Fund	0	0	9,750	13,900	0	0	11,000	0	24,900
Unmarked Police Vehicle	R		Cap. Impr. Fund	23,000	24,569	0	0	23,000	0	0	0	23,000
Furnace /HVAC Safety Center	A		Cap. Impr. Fund	4,120	2,651	4,244	4,244	4,371	4,502	4,547	4,683	22,347
Electronic Speed board	R		Cap. Impr. Fund	8,300	8,200	0	8,200	0	0	0	0	8,200
700/800mhz portable radios	R		Cap. Impr. Fund	0	0	0	0	15,000	15,000	15,000	15,450	60,450
Mobile Data Computers	R		Cap. Impr. Fund	0	0	0	40,000	0	0	0	0	40,000
<b>Total Capital Equipment</b>				<b>35,420</b>	<b>35,420</b>	<b>13,994</b>	<b>66,344</b>	<b>42,371</b>	<b>19,502</b>	<b>30,547</b>	<b>20,133</b>	<b>178,897</b>
% Change					0.00 %	(60.49) %	87.31 %	(36.13) %	(63.97) %	56.64 %	(34.09) %	
<b>Capital Projects (410-101-5470)</b>												
Cruiser Caport	C		Cap. Impr. Fund	0	0	0	100,000	0	0	0	0	100,000
<b>Total Capital Projects</b>				<b>0</b>	<b>0</b>	<b>0</b>	<b>100,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>100,000</b>
% Change					100.00 %	100.00 %	100.00 %	(100.00) %	100.00 %	100.00 %	100.00 %	
<b>Total Police Department</b>				<b>90,379</b>	<b>90,304</b>	<b>129,789</b>	<b>282,239</b>	<b>85,021</b>	<b>138,752</b>	<b>91,627</b>	<b>139,495</b>	<b>737,134</b>
% Change					(0.08) %	43.72 %	212.54 %	(69.88) %	63.20 %	(33.96) %	52.24 %	

# Capital Improvement Program Fire Department

## Year 2017

### Operating Equipment

1. Computer Replacement (\$2,000): Replacement of an office computer
2. Water Rescue Dry Suits (\$2,100): Replacement of two wet suits
3. Electronic Patient Care Reporting (\$5,000): Electronic reporting system for patient care that is compatible with the Ohio Pharmacy Board

### Capital Equipment

1. Ambulance (\$235,000): Additional ambulance with the beginning of a replacement schedule that would add a back-up ambulance to the fleet due to increased demands on EMS services.
2. Fire Hose Replacement (\$8,800): Replacement of 40 sections of 1 3/4 inch hose
3. Turnout Gear (\$17,000): Annual replacement of five sets of turnout gear.
4. Air Monitoring Equipment (\$9,000): Replacement of existing air monitoring meters
5. Office Furniture (\$35,000): Replacement of office workstations and desks
6. Building Generator (\$75,000): Replacement of building generator
7. SCBA Fit Tester (\$10,000): Replace fit tester
8. HVAC Units (\$4,244): Replacement of units (10 units in building...one per year). Cost split with police.

## Year 2018

### Operating Equipment

1. Computer Replacement (\$2,800): Replace/upgrade two desktop computers in the Fire Department.
2. Furniture (\$4,000): Replacement of furniture in the dayroom and kitchen area of the station.

### Capital Equipment

1. Command Vehicle (\$42,500): Replacement of the car purchased in 2010 used by the assigned Command Officer to bring necessary equipment to operate a command post and direct activities at the emergency scene. Life span is eight years.
2. CPR Mannequins (\$10,000): Purchase of four new training mannequins. The Fire Department's public education unit and the training division uses these mannequins to teach CPR and medic skills, such as oral intubation to establish an airway on a patient.
3. Turnout Gear (\$17,500): Annual replacement of five sets of turnout gear.
4. HVAC Units (\$4,371): Replacement of units (10 units in building...one per year). Cost split with police.

## Year 2019

### Operating Equipment

1. Computer Replacement (\$2,800): Replace/upgrade of desktop computers in the Fire Department.

### Capital Equipment

1. Air Packs & Rescue Equipment (\$170,000): Replacement of 20 SCBA units. Original packets purchased in 2004. The SCBA have a 15 year life expectancy.
2. Radios (\$175,000): Replacement of mobile and portable radios for use on the Hamilton County Communications System.
3. Rescue Equipment (\$8,000): Replacement of existing rescue equipment.
4. Turnout Gear (\$18,000): Annual replacement of five sets of turnout gear.
5. Ballistic Vest (\$2,000): Replacement of vests (5 year cycle)
6. HVAC Units (\$4,502): Replacement of units (10 units in building...one per year). Cost split with police.

223-000 Fire Department : 2017 Capital Projects and Equipment Purchases

Description	AV/R/C	Funding Source	2016 Budget	2016 Estimate	2017 Forecast	2017 Request	2018 Forecast	2019 Forecast	2020 Forecast	2021 Forecast	2022 Forecast	2023 Forecast	2024 Forecast	2025 Forecast	2026 Forecast	Total Forecast
<b>Operating Equipment (223-000-5404)</b>																
Computer Replacement	R	Opt. Budget	4,000	4,000	2,000	2,000	2,800	2,800	3,800	3,800	3,800	3,800	5,600	3,800	4,000	36,200
Furniture	R/A	Opt. Budget	0	0	0	0	4,000	0	0	6,000	4,000	0	0	0	4,000	12,000
Rescue Equipment	R	Opt. Budget	0	0	0	0	0	0	4,000	0	0	0	0	0	0	4,000
Training Room Chairs	R	Opt. Budget	0	0	1,000	2,100	0	0	0	0	0	0	2,300	0	0	4,400
Water Rescue Dry Suits	R	Opt. Budget	0	0	0	5,000	0	0	0	0	0	0	0	0	0	5,000
Electronic Patient Care Reporting	A	Opt. Budget	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Operating Equipment</b>			<b>4,000</b>	<b>4,000</b>	<b>3,000</b>	<b>9,100</b>	<b>6,800</b>	<b>2,800</b>	<b>7,800</b>	<b>9,800</b>	<b>7,800</b>	<b>3,800</b>	<b>7,900</b>	<b>3,800</b>	<b>14,000</b>	<b>73,600</b>
% Change				0.00 %	(25.00) %	127.50 %	(25.27) %	(58.82) %	178.57 %	25.64 %	(20.41) %	(51.28) %	107.89 %	(51.90) %	288.42 %	
<b>Capital Equipment (223-000-5405)</b>																
Air Packs & Rescue Equipment	R/A	Cap. Impr. Fund	0	0	0	0	0	170,000	0	0	0	0	0	0	0	170,000
Ambulance	R	Cap. Impr. Fund	0	0	0	235,000	0	0	0	270,000	0	0	0	0	0	810,000
Command Vehicle	R	Cap. Impr. Fund	0	0	42,500	0	42,500	0	0	0	0	0	0	0	0	102,300
CFR Mannequins	R/A	Cap. Impr. Fund	0	0	0	0	10,000	0	0	0	0	0	0	0	12,000	22,000
Fire Hose Replacement	R/A	Cap. Impr. Fund	0	0	8,000	8,800	0	0	4,000	0	0	17,500	0	0	0	47,300
Staff Vehicle	R	Cap. Impr. Fund	0	0	0	0	0	0	44,000	0	0	0	0	0	0	44,000
Radios	R	Cap. Impr. Fund	0	0	0	0	0	175,000	0	0	0	0	0	0	0	175,000
Rescue Equipment	R/A	Cap. Impr. Fund	0	0	0	0	0	8,000	0	0	0	0	0	0	0	8,000
Medic Car	R	Cap. Impr. Fund	38,000	38,000	0	0	0	0	0	0	0	0	0	0	0	515,000
Thermal Camera	R	Cap. Impr. Fund	15,000	15,000	0	0	0	0	0	15,000	0	0	0	0	0	15,000
Turnout Gear	R	Cap. Impr. Fund	16,500	16,500	17,000	17,000	17,500	18,000	18,500	19,000	19,500	20,000	20,500	21,000	22,000	193,000
Air Monitoring Equipment	R	Cap. Impr. Fund	0	0	9,000	9,000	0	0	0	0	0	0	0	0	0	19,000
Office Furniture	R	Cap. Impr. Fund	0	0	35,000	35,000	0	0	0	0	0	0	0	0	0	35,000
Building Generator	R	Cap. Impr. Fund	0	0	60,000	75,000	0	0	0	0	0	0	0	0	0	75,000
Rescue Pumper	R	Cap. Impr. Fund	0	0	0	0	0	0	780,000	0	0	0	0	0	0	780,000
Rescue System - Hydraulic	R	Cap. Impr. Fund	0	0	0	0	0	0	40,000	0	0	0	0	0	0	40,000
Fire Extinguisher Trainer	A	Cap. Impr. Fund	0	0	0	0	0	0	0	6,000	0	0	0	0	0	6,000
Exercise Equipment	R	Cap. Impr. Fund	4,250	4,250	0	0	0	0	4,250	0	0	0	4,500	0	0	8,750
SCBA Fit Tester	R	Cap. Impr. Fund	0	0	10,000	10,000	0	0	0	0	0	0	0	0	0	10,000
SCBA bottles	R	Cap. Impr. Fund	3,000	3,000	6,000	0	0	0	0	0	0	0	0	0	0	9,000
Mobile Data Computers	R	Cap. Impr. Fund	0	0	0	0	0	0	0	0	0	0	0	0	0	25,000
Quint	R	Cap. Impr. Fund	0	0	0	0	0	0	0	0	0	0	0	0	0	950,000
Cardiac Monitors	R	Cap. Impr. Fund	0	0	0	0	0	0	0	100,000	0	0	0	0	0	100,000
Ballistic Vest	R	Cap. Impr. Fund	0	0	0	0	0	2,000	0	0	0	0	2,500	0	0	4,500
HVAC Units	R	Cap. Impr. Fund	0	0	0	0	4,371	4,502	4,637	4,776	4,919	5,067	5,220	5,380	5,550	48,686
A/C Command Vehicle	R	Cap. Impr. Fund	4,120	4,120	4,244	4,244	0	0	0	0	0	0	51,500	0	0	51,500
Support Unit	R	Cap. Impr. Fund	0	0	0	0	0	0	30,000	0	0	0	0	0	0	30,000
<b>Total Capital Equipment</b>			<b>80,870</b>	<b>80,870</b>	<b>191,744</b>	<b>394,044</b>	<b>74,371</b>	<b>377,502</b>	<b>928,387</b>	<b>414,776</b>	<b>49,419</b>	<b>992,667</b>	<b>699,220</b>	<b>359,380</b>	<b>114,350</b>	<b>4,300,016</b>
% Change				0.00 %	137.10 %	387.26 %	(81.13) %	407.59 %	145.13 %	(55.18) %	(88.09) %	1,908.47 %	(39.65) %	(40.19) %	(68.09) %	
<b>Total Fire Department</b>																
			<b>84,870</b>	<b>84,870</b>	<b>194,744</b>	<b>403,144</b>	<b>81,171</b>	<b>380,302</b>	<b>933,187</b>	<b>424,576</b>	<b>57,219</b>	<b>996,367</b>	<b>607,120</b>	<b>362,180</b>	<b>128,350</b>	<b>4,373,916</b>
% Change				0.00 %	129.46 %	375.01 %	(79.87) %	368.52 %	145.38 %	(54.50) %	(86.52) %	1,641.32 %	(39.07) %	(40.34) %	(64.56) %	

RESOLUTION NO.           , 2016

**A RESOLUTION AUTHORIZING A CONTRACT WITH MOTOROLA FOR THE  
PURCHASE OF REPLACEMENT RADIOS**

**WHEREAS**, the Motorola company is the manufacturer for the radio system and equipment used by the Police and Fire Departments; and

**WHEREAS**, with Motorola's decision to phase out the Motorola XTS5000 and to limit support for repairing such radios as currently used by the Departments, the Administration has determined it is necessary to replace the radio system and has planned such replacement over the course of the next few years; and

**WHEREAS**, Motorola has contacted the City offering the sale of a limited number of its upgraded radios which were used for a short period of time to provide security support to the Republican National Convention; and

**WHEREAS**, such radios will be offered with a new radio warranty at a substantial savings justifying the purchase of these radios to provide immediate support to the Departments, and to eliminate the extended cost of phasing out the current radio system and replacing such radio system with upgraded models; and

**WHEREAS**, to take advantage of this opportunity, immediate emergency action is necessary to provide support for the Police and Fire Departments by authorizing this contract without public bidding.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The City Manager is authorized to enter into a contract with the Motorola company to purchase fifty (50) Motorola APX6000 portable radios, fifty (50)

remote shoulder microphones, nineteen (19) individual chargers, seven (7) bank chargers, fifty (50) spare batteries, and initial programming at a cost not to exceed \$140,000.00.

**SECTION 2.** As it is necessary to act immediately to replace the existing radio system with these used radios which will include a three year warranty, given the phase out of existing radios and the real and present need to replace such radio system, Council hereby determines that this purchase opportunity is an emergency necessary to support the operations of the Police and Fire Departments, and therefore Council, by a minimum of two-thirds vote set forth in the record of these proceedings does hereby authorize the City Manager to enter into this contract without the need for formal bidding and advertising.

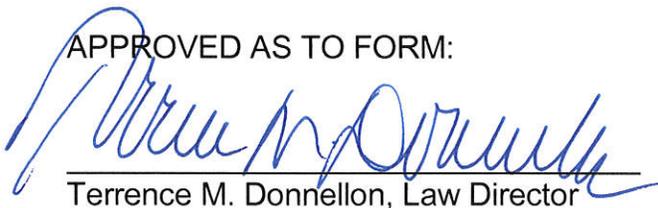
**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

PASSED: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Connie M. Gaylor, Clerk of Council

\_\_\_\_\_  
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellan, Law Director

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City of Montgomery  
City Council Public Hearing Minutes  
October 5, 2016

Present

Wayne Davis, City Manager  
Terry Donnellon, Law Director  
Tracy Roblero, Community Development Director  
Brian Riblet, Public Works Director  
Paul Wright, Fire Chief  
Faith Lynch, Community Engagement Coordinator  
Connie Gaylor, Clerk of Council

City Council Members Present

Chris Dobrozsi, Mayor  
Lynda Roesch  
Ann Combs  
Gerri Harbison  
Ken Suer  
Mike Cappel  
Craig Margolis

City Council convened in Council Chambers to conduct a Public Hearing at 6:30 p.m. with Mayor Dobrozsi presiding.

Ms. Roblero stated that the Planning Commission met on August 15 to review the following applications that are being presented to City Council this evening for their consideration.

Ms. Roblero stated that the first two applications were both submitted by MB Land Company in regards to the Vintage Club Planned Development.

Rezoning of the Property located at PIN 620-0210-0723-00

Ms. Roblero explained that the first application is a request to rezone the property located at PIN 620-0210-0723-00 from the current zoning classification to 'LB' – Limited Business District with a Planned Development Overlay. She stated that the applicant is proposing to rezone is approximately 0.0361 acres in size and the applicant is working with the current owner to purchase the property for development as part of the Vintage Club of Montgomery. The applicant is proposing to rezone the property to 'LB' – Limited Business with a Planned Development Overlay in conformance with the zoning of the Vintage Club of Montgomery. The property was recently annexed into the City of Montgomery from Symmes Township. The property is currently zoned 'O' Residence with Subservient Office and Business Uses as it was zoned when located in the Township. Section 151.0104 states that "all land that may hereafter be annexed to the City of Montgomery, the township zoning regulations existing at the time of annexation shall continue to govern the former township land until an amendment to the City of Montgomery Zoning Map is adopted in conformance with the procedures of this Zoning Code". The applicant is requesting a zone change that is consistent with the zoning of the Vintage Club and intends for this property to become part of the Vintage Club Planned Development.

Ms. Roblero stated that Notices were sent to neighbors within a 300' radius of the property. Staff received several inquiries on the project; however, no property owners submitted comments in opposition or in favor of the rezoning. After hearing the testimony presented at the meeting and discussing the application, the Planning Commission voted unanimously to recommend approval of the rezoning of the property.

Ms. Roblero stated that staff supports the recommendation of the Planning Commission to recommend approval of the rezoning of the property and does not believe that rezoning this property will have a negative impact surrounding properties due to the facts that it is a small parcel of property that does not have frontage on Montgomery Road, the surrounding properties are commercial in nature and this property was always intended to be included in the Vintage Club Planned Development.

Modification to the Vintage Club Planned Development List of Exceptions and Conditions

Ms. Roblero explained that this is the second application submitted by MB Land Company relating to the Vintage

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City Council Public Hearing Minutes

October 5, 2016

Page 2.

53 Club Development. She stated that the applicant is developing the Vintage Club Village Section in partnership  
54 with Traditions Building and Development Group. A revised General Development Plan was approved by the  
55 Planning Commission in May of this year. During the original approval of the Planned Development in 2006 a  
56 Statement of Conditions and Exceptions was established and has since been modified on several occasions, most  
57 recently in March of 2013 in order to accommodate the public parking garage and the Christ Hospital medical  
58 office buildings. At the time that the Statement of Conditions and Exceptions was created and modified, it was  
59 not clear how the remainder of the village portion would be subdivided. With the approval of the revised General  
60 Development Plan and the proposed lot splits, these details have come into focus, requiring some modifications to  
61 the Statement of Conditions and Exceptions. Section 150.1311(b) allows the Planning Commission to recommend  
62 approval of minor modifications to the Planned Development provided that the modifications are consistent with  
63 the approved Planned Development.

64  
65 Ms. Roblero explained that notices were also sent to neighbors within a 300' radius of the property. Staff  
66 received several inquiries on the project; however, no property owners submitted comments in opposition or in  
67 favor of the modifications. At the Planning Commission meeting, there was much discussion regarding the  
68 proposed modification to the height of the buildings in the interior to the Village Section. After hearing the  
69 testimony presented at the meeting and discussing the application, the Planning Commission voted 5 – 1 in favor  
70 of recommending approval of the minor modification as proposed.

71  
72 Ms. Roblero stated that staff supports the recommendation of the Planning Commission to approve the proposed  
73 modifications to the Vintage Club Planned Development List of Exceptions and Conditions. The proposed  
74 modifications to the Statement of Conditions and Exceptions were created by Staff and the applicant working  
75 hand in hand to address the conflicts between the Zoning Regulations in the underlying LB District and the  
76 approved General Development Plan. These modifications are consistent with the approved General  
77 Development Plan and the intent of the Vintage Club Planned Development which has been communicated from  
78 the beginning of the project. The modifications to the general conditions in regards to The Christ Hospital are a  
79 result of discussions between the developer, The Christ Hospital and the City to ensure that the Hospital is made  
80 of proposed changes to the plan and can be assured that these changes do not negatively impact the shared parking  
81 for the project.

82  
83 Text Amendment to Chapter 151 of the Zoning Code

84  
85 Ms. Roblero stated that staff and the Law Director have been working for several years on regulations to bring the  
86 Zoning Code into compliance with the law concerning Sexually Oriented Businesses. Recently, City Council  
87 enacted a moratorium on Sexual Encounter Businesses and tasked the Planning Commission with studying and  
88 making a recommendation to City Council on these types of businesses. The Planning Commission met on  
89 August 15 to consider this application. After hearing the testimony presented at the meeting and discussing the  
90 text amendment, the Planning Commission voted unanimously in favor of recommending approval text  
91 amendment as proposed.

92  
93 Ms. Roblero stated that staff supports the recommendation of the Planning Commission and is requesting that City  
94 Council approve the proposed text amendment to Chapter 151 of the Zoning Code.

95  
96 Mr. Donnellon explained that the moratorium was first enacted seven months ago to allow staff and the planning  
97 commission time to study the current zoning code language and to prevent the approval of such businesses until  
98 the study was complete.

99  
100 Mr. Donnellon explained that a sexually oriented business was free speech protected so therefore by law there has  
101 to be an area within the City in which they can operate. He stated that the restrictions stated in the Permitted Use

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City Council Public Hearing Minutes

October 5, 2016

Page 3.

102 in the General Business District require that this type of a business has to be 750 feet from a residential area as  
103 well as a school, daycare and church. This would limit where this type of business could operate within the City.

104

105 Mr. Donnellon stated that we do not have a current application at this time, that this is a preemptive measure. He  
106 also noted that licensing is required to be provided for the owners and the employees. Due to the costs of these  
107 licenses, it may detour some applicants.

108

109 Mr. Donnellon stated that if approved by City Council, legislation for this text amendment could be placed on the  
110 October 19 Work Session Agenda and voted on at the November 2, Business Session agenda.

111

112 Mayor Dobrozsi stated that for all three items presented at this Public Hearing that City Council should take the  
113 applications under advisement until such time that legislation is brought forward at the next Business Session for  
114 vote.

115

116 Mr. Cappel made a motion to take all applications under advisement pending legislation. Mr. Margolis seconded.  
117 City Council unanimously agreed.

118

119 Mayor Dobrozsi asked for a motion to adjourn from the Public Hearing.

120

121 Mr. Margolis moved to adjourn. Mr. Cappel seconded. City Council unanimously agreed.

122

123 The meeting was adjourned at 6:48 p.m.

124

125

126

---

Connie Gaylor, Clerk of Council

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City of Montgomery  
City Council Business Session Minutes  
October 5, 2016

Present

Wayne Davis, City Manager  
Terry Donnellon, Law Director  
Tracy Roblero, Community Development Director  
Katie Smiddy, Finance Director  
Brian Riblet, Public Works Director  
Don Simpson, Police Chief  
Paul Wright, Fire Chief  
Faith Lynch, Community Engagement Coordinator  
Connie Gaylor, Clerk of Council

City Council Members Present

Chris Dobrozsi, Mayor  
Lynda Roesch, Vice Mayor  
Ann Combs  
Gerri Harbison  
Ken Suer  
Mike Cappel  
Craig Margolis

City Council convened in Council Chambers at 7:00 p.m. for the Business Session with Mayor Dobrozsi presiding.

**ROLL CALL**

Mayor Dobrozsi asked for a motion to dispense with the roll call since everyone was in attendance.  
Mr. Margolis moved to dispense with the roll call. Mr. Cappel seconded. City Council unanimously agreed.

**GUESTS AND RESIDENTS**

Eddie Davenport-3835 Hyde Park Avenue, addressed City Council to inform them of a candidate for Hamilton County Clerk of Court, Aftab Pureval. Mr. Davenport stated that Mr. Pureval was a southwest Ohio native and obtained his undergraduate degree from Ohio State University before attending the University of Cincinnati, School of Law. Mr. Pureval was a former Federal Prosecutor in Hamilton County and is currently employed by Proctor and Gamble. Mr. Davenport shared Mr. Pureval’s interests for running for Hamilton County Clerk of Courts with City Council and thanked them for the opportunity to speak with them.

Mayor Dobrozsi thanked Mr. Davenport for attending the meeting and wished Mr. Pureval well in his campaign and the election.

**LEGISLATION FOR CONSIDERATION TONIGHT**

**New Legislation**

**A Resolution Accepting the Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor**

Mr. Suer moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

Mr. Suer read the Resolution by title only and moved for passage. Mr. Cappel seconded.

Mr. Suer explained that, if approved, this Resolution will accept the rates and amounts determined by the Hamilton County Budget Commission. As a State of Ohio taxing authority and pursuant to the Ohio Revised Code, the City is required to adopt an annual tax budget. City Council adopted the Tax Budget on July 1, 2016, and the 2017 Tax Budget was then submitted to the Hamilton County Auditor for review by that office and the Hamilton County Budget Commission. Those reviews did not generate any questions and the proposed Tax Budget was accepted by the Budget Commission and Auditor. City Council is requested to act to accept the Budget Commission’s rates and amounts, which would result in the estimated collections as specified in the City’s 2017 Tax Budget. This action will then permit the Budget Commission to collect property taxes at the rates established for the upcoming year.

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City Council Business Session Minutes

October 5, 2016

Page 2

55 The roll was called and showed the following vote:

56

57 AYE: Combs, Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis (7)

58 NAY: (0)

59 ABSENT: (0)

60

61 **An Ordinance to Make Appropriations for Current Expenses and Other Expenditures of the City of**  
62 **Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017**

63

64 Mr. Suer moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

65

66 Mr. Suer read the Ordinance by title only and moved for passage of the first reading. Mr. Cappel seconded.

67

68 Mr. Suer explained that this Ordinance, if approved, would accept the Appropriations for Current Expenses and  
69 Other Expenditures of the City of Montgomery, State of Ohio, During the Fiscal Year Ending December 31, 2017.  
70 He explained that these documents were presented to and reviewed with the Financial Planning Committee of City  
71 Council at their September 6 meeting and were formally reviewed with staff on September 14.

72

73 The roll was called and showed the following vote:

74

75 AYE: Cappel, Harbison, Dobrozsi, Roesch, Suer, Margolis, Combs (7)

76 NAY: (0)

77 ABSENT: (0)

78

79 **A Resolution Authorizing an Agreement with The Ohio Department of Transportation for Bridge Inspection**  
80 **Services**

81

82 Mr. Cappel moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

83

84 Mr. Cappel read the Resolution by title only and moved for passage. Mrs. Harbison seconded.

85

86 Mr. Cappel explained that this Resolution, if approved, will authorize the City Manager to enter into an agreement  
87 with the Ohio Department of Transportation (ODOT) for the project known as Bridge Inspection Program Services,  
88 PID 102554. Each year the City of Montgomery is required to complete an annual inspection of the bridge located  
89 on Terwilliger's Run Drive. In 2014, the City of Montgomery entered into a similar agreement with ODOT by  
90 passing Resolution 9, 2014 which included bridge inspection services for years 2014, 2015 and 2016. ODOT has  
91 indicated they are renewing the program for three more years which would extend their bridge inspection services  
92 through years 2017, 2018 and 2019. In this program the Ohio Department of Transportation shall assume and bear  
93 100% of the necessary costs for bridge inspection program services requested by the City of Montgomery and agreed  
94 to by the State.

95

96 The roll was called and showed the following vote:

97

98 AYE: Harbison, Dobrozsi, Roesch, Suer, Margolis, Combs, Cappel (7)

99 NAY: (0)

100 ABSENT: (0)

101

102 **A Resolution Authorizing the City Manager to Extend a Contract with SwimSafe Pool Management, Inc. for**  
103 **Professional Services Related to the Operation and Management of the Montgomery Municipal Pool**

104

105 Ms. Roesch moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

106

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City Council Business Session Minutes

October 5, 2016

Page 3

Ms. Roesch read the Resolution by title only and moved for passage. Mr. Cappel seconded.

Ms. Roesch explained that this Resolution, if approved, will authorize the City Manager to enter into a contract extension with SwimSafe Pool Management, Inc. for the operation and management of the municipal pool. This contract will cover the management of the pool, staffing of guards, management and staffing of the snack bar and front desk, and provisions for swimming lessons and swim team staff and the scheduling for each. Also included are general maintenance responsibilities, season opening work and winterization duties. The current contract is scheduled to end on October 31, 2016, however, a two-year contract continuation option is available.

The roll was called and showed the following vote:

AYE: Dobrozsi, Roesch, Suer, Margolis, Combs, Cappel, Harbison	(7)
NAY:	(0)
ABSENT:	(0)

**A Resolution Authorizing the City Manager to Prepare and Submit an Application to Participate in The Ohio Public Works Commission State Capital Improvement and/or Local Transportation Improvement Program(s) And to Execute Contracts as Required**

Mr. Cappel moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

Mr. Cappel read the Resolution by title only and moved for passage. Mrs. Combs seconded.

Mr. Cappel explained that this Resolution, if approved, will authorize the City Manager to submit an application to participate in the Ohio Public Works Commission State Capital Improvement Program and to execute any contracts as required for the proposed Ross Avenue Improvement Project. Staff submitted a grant/loan application to the Ohio Public Works Commission (OPWC) on September 14, 2016 in an effort to subsidize project costs associated with the proposed Ross Avenue Improvement Project, which includes the construction of a concrete sidewalk, concrete curbing, minor road widening, and significant storm drainage improvements. Funding for this project is currently included in the 2017 City of Montgomery Capital Improvement Program (CIP) budget. The OPWC grant/loan application requests \$121,245 in grant funds and \$121,245 in a loan with 0% interest and would require the City of Montgomery to repay OPWC for a term not to exceed 20 years.

The roll was called and showed the following vote:

AYE: Roesch, Suer, Margolis, Combs, Cappel, Harbison, Dobrozsi	(7)
NAY:	(0)
ABSENT:	(0)

**ADMINISTRATION REPORT**

Mr. Davis reported on the following items:

- The Parks and Recreation Committee has cancelled their meeting for the month of October.
- The Government Affairs and Public Works Committees will meet in Council Chambers on Monday, October 10 at 4:00 and 5:00 p.m., respectively.
- City Council Work Session is scheduled for October 19, 2016 at 7:00 p.m.

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City Council Business Session Minutes

October 5, 2016

Page 4

- 158 • A sure sign that Fall has arrived as public works staff has once again planted over 800 mums throughout  
159 Montgomery to provide a vibrant color for the next several weeks.
- 160
- 161 • Mr. Davis signed a subscription agreement with MySidewalk in the amount of \$5,000. This new tool for  
162 mapping and community engagement was discussed in the budget review meeting and will be utilized  
163 primarily by the Community Development Department, but also will be useful to the Public Works and CIS  
164 Department. The subscription is for 2017 for five users; however, MySidewalk has agreed to allow the City  
165 to begin utilizing the tool prior to January at no additional cost.
- 166
- 167 • The Civil Service exam for patrol officer has been scheduled for November 19. The job announcement  
168 has been posted on the City's website and will be published in this Sunday's Enquirer (10/9), will run on  
169 CareerBuilder and will also be distributed to various organizations and outlets. We currently have two open  
170 positions.
- 171
- 172 • You may have noticed that the Sycamore Community School flags are on display downtown in recognition  
173 of Sycamore's homecoming. We wish them luck for their game against Lakota East this Friday!
- 174
- 175 • As a reminder, the First Responders Recognition Breakfast is this Friday, October 7, at the Safety Center  
176 from 7:00 to 9:00 a.m. Breakfast will be served in the Mayor's Court/Training Room downstairs.
- 177
- 178 • As a reminder, the Harvest Moon Festival will be held this Saturday, October 8, in Swaim Park from 5:00  
179 to 8:00 pm. Pit to Plate will be serving coney's, mac and cheese and pulled chicken and pork barbeque and  
180 Funnel Vision will be selling gourmet funnel cakes.
- 181
- 182 • The International Reception will be held this Sunday, October 9 at Terwilliger Lodge from 5:00 to 7:00  
183 p.m.
- 184
- 185 • The Live at the Uni concert series begins on Monday, October 10 featuring Cincinnati's professional  
186 cappella male octet, No Promises. The second in the three-part series is on Monday, October 24, with Frank  
187 Proto and Tim Berens presenting duets with string bass and guitar original arrangements and the final  
188 concert will be held on Monday, November 7 with Mandy Gaines performing her own interpretations of  
189 jazz, pop, R&B and soul classics. Concerts begin at 7:00 p.m. and each concert is full with 130 people  
190 registered. Montgomery Inn is sponsoring the reception after each concert with a dedicated space on their  
191 second floor and free appetizers.
- 192
- 193 • The Much In Common Consortium will be holding a Regional Policy Caucus: The Heroin Epidemic, on  
194 Tuesday, November 1st, 2016 at the St. Elizabeth Training & Educational Center in Erlanger, KY. Check  
195 in and breakfast begins at 7:30 a.m. with the program schedule for 8:00 to 10:00 a.m. Please let Connie  
196 know if you plan to attend.
- 197
- 198 • Mr. Davis signed a contract with Cox Media Group for the 2017 Calendar in the amount of \$12,673.17.
- 199
- 200 • Please mark your calendars for the 2017 Volunteer Appreciation Dinner on Wednesday, April 26, 2017 at  
201 the Montgomery Inn. This recognition dinner runs from 6:30 to 8:30.
- 202

**APPROVAL OF MINUTES**

205 Mr. Margolis moved to approve the September 14, 2016 Budget Review Session and the September 21, 2016 Work  
206 Session minutes. Mr. Cappel seconded. City Council unanimously agreed.

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City Council Business Session Minutes

October 5, 2016

Page 5

209

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### **MAYOR'S COURT REPORT**

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Mayor Dobrozsi reported that the total Mayor's Court collections for the month of September 2016 were \$11,405.

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Mr. Cappel moved to accept the Mayor's Court collections for the month of September 2016. Mr. Margolis seconded. City Council unanimously accepted the collections.

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### **OTHER BUSINESS**

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Mrs. Combs reported that the Law and Safety Committee met on Monday, October 10 and discussed current communications with Sycamore Community Schools in regards to providing a part-time School Resource Officer (SRO) position at the Junior High School. She reported after discussion with Police Chief Simpson that it was the recommendation of the Committee to approve the use of City staffing to provide this service to the School.

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Chief Simpson stated that the SRO position would be provided for the remainder of this school year and then would be evaluated and discussed if it would be continued for the school year of 2017-2018. He stated that it would require no additional personnel and anticipates bringing legislation in front of City Council at the November Work Session.

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Mrs. Combs stated that also discussed at the Law and Safety Committee meeting was a request made by the Center for Addiction Treatment (CAT) to make a donation for operational purposes for the treatment of patients with addictions within the Hamilton County Area. She explained that Sandi Kuehn, President and CEO as well as Board Member and Montgomery resident, Ken Schneider were at the meeting to give a presentation on the rise of opioid abuse and the influx of patients needing treatment.

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Mr. Ken Schneider of 9804 Tollgate Lane, was present to further discuss this request made on behalf of the Center for Addiction Treatment. He stated to City Council that as a resident of Montgomery for 45 years now, that he has seen the effects of this increase in addictions throughout the area and even touching Montgomery. He is coming to the City to ask City Council to consider being a contributor towards the construction of a larger facility for the Center of Addiction Treatment, that will provide for the increased treatment of approximately 2,800 patients annually.

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City Council thanked Mr. Schneider for his thoughts and presentation and his commitment to the Center for Addiction Treatment.

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Mrs. Combs stated that it is the recommendation of the Law and Safety Committee to contribute \$12,500 towards the requested amount of \$25,000 made by the Center for Addiction Treatment.

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Ms. Roesch asked Mr. Donnellon, Law Director, if this payment could be made as a grant since it is a one-time gift.

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Mr. Donnellon stated that it could be done that way and that legislation could be drafted in support of the grant.

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Mr. Davis stated that he and Chief Simpson had extensive conversations on the funding of this request and verified that there were funds in the General Fund and Law Enforcement Fund to support the recommended amount.

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Mr. Margolis made a motion to support the recommendation made by the Law and Safety Committee to issue a grant in the amount of \$12,500 to the Center for Addiction Treatment and to place the legislation for consideration on the next available Business Session agenda.

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Mrs. Harbison seconded. City Council unanimously agreed.

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City Council Business Session Minutes

October 5, 2016

Page 6

261 Mr. Cappel reported that the City was informed by letter by Hamilton County Solid Waste and Recycling, of a grant  
262 award in the amount of \$19,436 for the Residential Recycling Incentive program. This award reflects the recycling  
263 collections made for the first half of 2016.

264  
265 Mrs. Harbison reported that the Arts Commission held their annual Strategic Planning Retreat on Saturday, October  
266 1, and reported at this meeting was the sponsorship funding for the 2017 Spring Live at the Uni in the amount of  
267 \$1,500 and the 2017 Photo Contest in the amount of \$1,500. She stated that both events were now fully funded.

268  
269 Mayor Dobrozsi asked if there was any further business to discuss in Public Session. There being none, he asked  
270 for a motion to adjourn.

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272 Mr. Margolis moved to adjourn. Mr. Cappel seconded. City Council unanimously agreed.

273  
274 City Council adjourned at 7:43 p.m.

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Connie Gaylor, Clerk of Council